

Lynn A. Robeson, Hearing Examiner

## HEARING EXAMINER'S REPORT AND RECOMMENDATION

### TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>II. STATEMENT OF THE CASE .....</b>	<b>5</b>
<b>III. FACTUAL BACKGROUND .....</b>	<b>7</b>
A. SUBJECT PROPERTY .....	7
B. SURROUNDING AREA AND ADJACENT DEVELOPMENT.....	10
C. PRIOR ZONING HISTORY .....	15
D. PROPOSED DEVELOPMENT .....	19
1. Development Concept and Applicant's Vision for the Project.....	19
2. The Applicant's Original Development Plan .....	19
3. Current Version of the Development Plan .....	24
4. Development Plan & Binding Elements .....	30
E. CONFORMANCE WITH THE MASTER PLAN .....	34
1. 1994 Bethesda CBD Sector Plan .....	34
2. The Applicant's Interpretation.....	40
3. The Opposition's Position .....	43
F. COMPATIBILITY .....	47
2. Step Backs and Setbacks .....	55
3. Architecture .....	61
G. Public Facilities (Transportation, School Capacity and Water & Sewer Service) .....	67
2. Circulation, Parking and Access.....	69
2. Schools .....	78
3. Water and Sewer Service and Other Utilities .....	79
H. ENVIRONMENTAL ISSUES .....	80
I. COMMUNITY OUTREACH/RESPONSE TO THE PROJECT .....	80
J. PUBLIC INTEREST .....	84
<b>IV. SUMMARY OF THE HEARING .....</b>	<b>86</b>
<b>V. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....</b>	<b>86</b>
A. SUBSTANTIAL COMPLIANCE WITH COUNTY PLANS AND POLICIES .....	88
1. The Applicable Master Plan or Sector Plan .....	89
2. The General Plan and the County Capital Improvements Program.....	96
3. Other County Policies (Annual Growth Policy .....	96
B.ZONE REQUIREMENTS, SAFETY, AMENITIES AND COMPATIBILITY .....	98
1. Compliance with Zone Purposes, Standards and Regulations .....	99
a. Compliance with the Purposes of the TS-R Zone .....	99
b. Compliance with the Standards and Regulations of the TS-R Zone.....	101
2. Safety, Convenience and Amenity of Residents .....	102
3. Compatibility with Adjacent Development .....	102
C. INTERNAL VEHICULAR AND PEDESTRIAN CIRCULATION SYSTEMS AND SITE ACCESS .....	106
D. PREVENTING EROSION, PRESERVING VEGETATION, FOREST .....	108
E. OWNERSHIP AND PERPETUAL MAINTENANCE .....	108
F. THE PUBLIC INTEREST .....	109
G. CONCLUSION .....	109
<b>VI. RECOMMENDATION .....</b>	<b>110</b>

## I. EXECUTIVE SUMMARY

Applicant:	4831 West Lane LLC
LMA No. & Date of Filing:	G-954, filed November 15, 2012
Current Zone and Use:	The property included in the rezoning application is currently zoned R-60. The Applicant seeks to combine this property with land already rezoned to the TS-R Zone in LMA G-843. The combined properties are currently improved single-family detached structures used for commercial retail and office.
Zoning and Use Sought:	The Applicant requests rezoning of Lot 26 and rights of way associated with Lots 24 and 25 in the Edgemoor subdivision in order to combine this property previously rezoned to the TS-R Zone.
Location:	The subject property is located in the northwest quadrant of the intersection of Montgomery Lane and West Lane in Bethesda
Density Permitted in TS-R Zone:	2.5 FAR; 3.05 FAR if 15% of the units are MPDUs.
Density Planned:	3.05 FAR, 15% of the units will be MPDUs.
Public Use Space Proposed:	Proposed 10% (10% Required).
Active & Passive Recreation Space:	Proposed: 26% (20% Required).
Parking Required/Planned:	Proposed: 123 spaces (123 Required).
Height Planned:	70 feet, maximum.
Traffic Issues:	Whether the density requested will create traffic congestion on Montgomery Lane, which is a 21-foot wide two-lane street.
Zoning Issues:	Whether the height, mass and architecture of the proposed development of the proposed development is compatible with the surrounding area.
Consistency with Master Plan:	Whether the height, setbacks, mass and architecture of the proposed development conform to the recommendations in the 1994 Bethesda Central Business District Sector Plan.
Neighborhood Response:	Opposed by the City Homes of Edgemoor and Edgemoor Condominium Residences as well as individual residents of those associations; supported by the Villages of Bethesda Homeowners Association and the owners of Edgemoor at Arlington North and 4825 Montgomery Lane.

Technical Staff Recommends:	Approval
Planning Board Recommends:	Approval
Hearing Examiner Recommends:	Approval



## II. STATEMENT OF THE CASE

Application No. G-954, filed on November 15, 2012, by 4831 West Lane LLC requests reclassification of approximately 11,847 square feet of land from the R-60 to the TS-R Zone (Transit Station-Residential), consisting of Lot 26 of the Edgemoor subdivision and the right-of-way for Lots 24-27 of the Edgemoor subdivision. In addition, Development Plan Amendment No. 13-01 proposes to amend a development plan approved as part of LMA G-873 to include Lot 26 and the right-of-way associated with Lots 24 and 25.<sup>1</sup> The gross tract area of the development plan application is 38,804 square feet, which includes Lots 24, 25 and 27 (rezoned in LMA G-873), new lot 26, and all adjoining right-of-ways. DPA 13-01 Exhibit 2.<sup>2</sup> The subject site is located in the northwest quadrant of the intersection of Montgomery Lane and West Lane in Bethesda, Maryland.

The Hearing Examiner issued notice of a public hearing, scheduled for January 11, 2013, on December 7, 2012. Exhibit 37. The application for rezoning was reviewed by the Technical Staff, who recommended approval of the application provided that the Applicant included two additional textual binding elements to ensure compatibility with the surrounding area. Exhibit 54. The Planning Board recommended approval of the application, although Chair Carrier recommended limiting the density to 100 dwelling units, inclusive of MPDUs, to conform better with the recommendations of the *1994 Bethesda Central Business District Sector Plan* (Sector Plan or Plan). Exhibit 55. The Board also recommended moving the proposed public use space from the northern end of West Lane to Montgomery Lane, incorporating measures to address

---

<sup>1</sup> LMA G-873 rezoned Lots 24, 25 and 27 from the R-60 to the TS-R Zone, but did not rezone the right of way associated with Lots 24 and 25 nor did it include Lot 26. The Applicant previously filed a local map amendment application (G-912) to add Lot 26 to the TS-R Zone, but inadvertently failed to include the right-of-way that had not been rezoned in G-873. The Council permitted the Applicant to withdraw G-912 without prejudice.

<sup>2</sup> All exhibit references are to the record of LMA G-954, as opposed to DPA 13-01, unless otherwise noted.

parking and loading issues on the street, and including an additional five binding elements to the Plan. Exhibit 55.

The January 11, 2013, public hearing proceeded as scheduled and was continued to January 15, 2013. At the January 11<sup>th</sup> public hearing, the Applicant proposed a revised development plan to respond to the comments of the Planning Board. As required by §59-D-1.72 of the Zoning Ordinance, the Hearing Examiner referred the matter back to the Planning Board and Technical Staff for the opportunity to comment on the revised development plan and continued the public hearing to April 8, 2013. Exhibit 61; 1/15/13 T. 39, 46. The Planning Board Chair responded by scheduling a second hearing before the Board on March 14, 2013, limiting the issues to (1) public use space, (2) building setbacks, and (3) changes to the building design. Exhibit 63. Technical Staff submitted a supplemental report (Exhibit 105(a)) recommending approval provided the northern and western building setbacks were 15 feet. The Planning Board found that the revised building design increased the project's compatibility, although it still recommended additional binding elements. Exhibit 105.

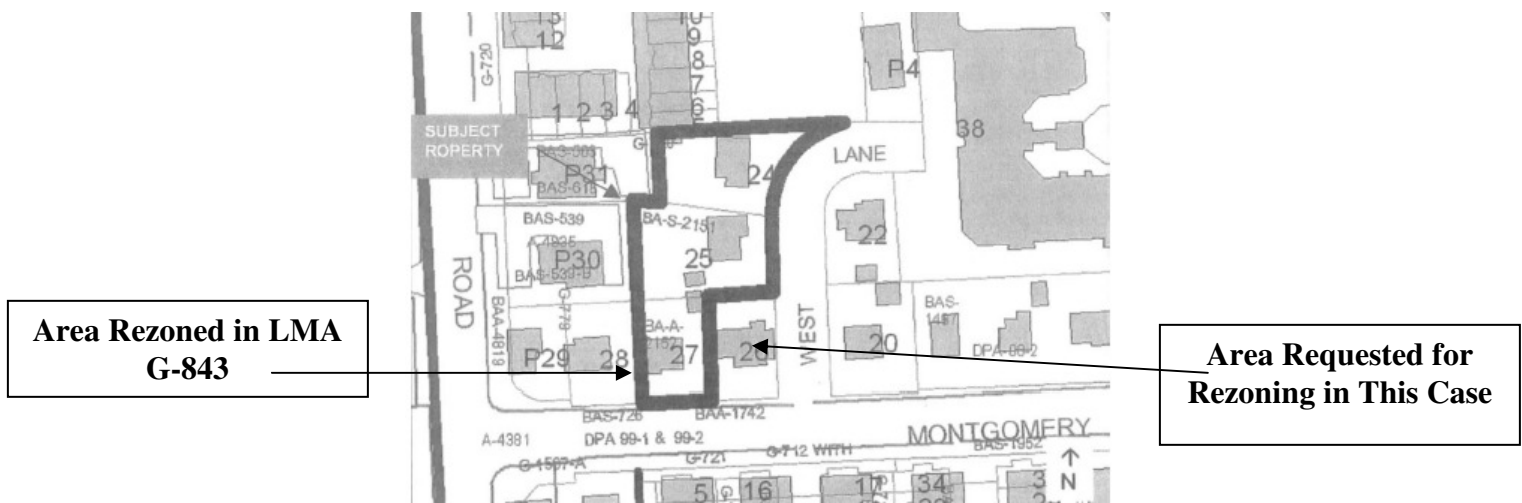
The public hearing re-convened on April 8, 2013, and was continued to April 9, April 15, April 16, April 17, April 19, April 29, 2013, and May 13, 2013. The record was held open for representatives of the Villages of Bethesda Homeowners Association (VOB), adjacent to the northern property boundary, to submit its position on the setback of the property from the northern boundary line. This evidence was received (Exhibits 126, 128, 129), and the record closed on May 30, 2013. 5/13/13 T. 240.

### III. FACTUAL BACKGROUND

#### A. Subject Property

The area of the development plan consists of approximately 38,804 square feet located at the northwest corner of the intersection of Montgomery Lane and West Lane in Bethesda. Lots 24, 25 and 27 of the Edgemoor subdivision (consisting of approximately 26,957 square feet) were rezoned from the R-60 to the TS-R Zone in LMA G-843, approved by the District Council on July 10, 2007. Exhibit 101(c). This application seeks to combine Lot 26 (and portions of the right-of-way associated with Lots 24 and 25) with the area previously rezoned in a unified development plan. Exhibit 54. The area to be rezoned in this case includes only Lot 26 and the rights-of-way associated with Lots 24 and 25. This area is shown on a map from the Technical Staff Report (Exhibit 54, p. 4) on the following page.

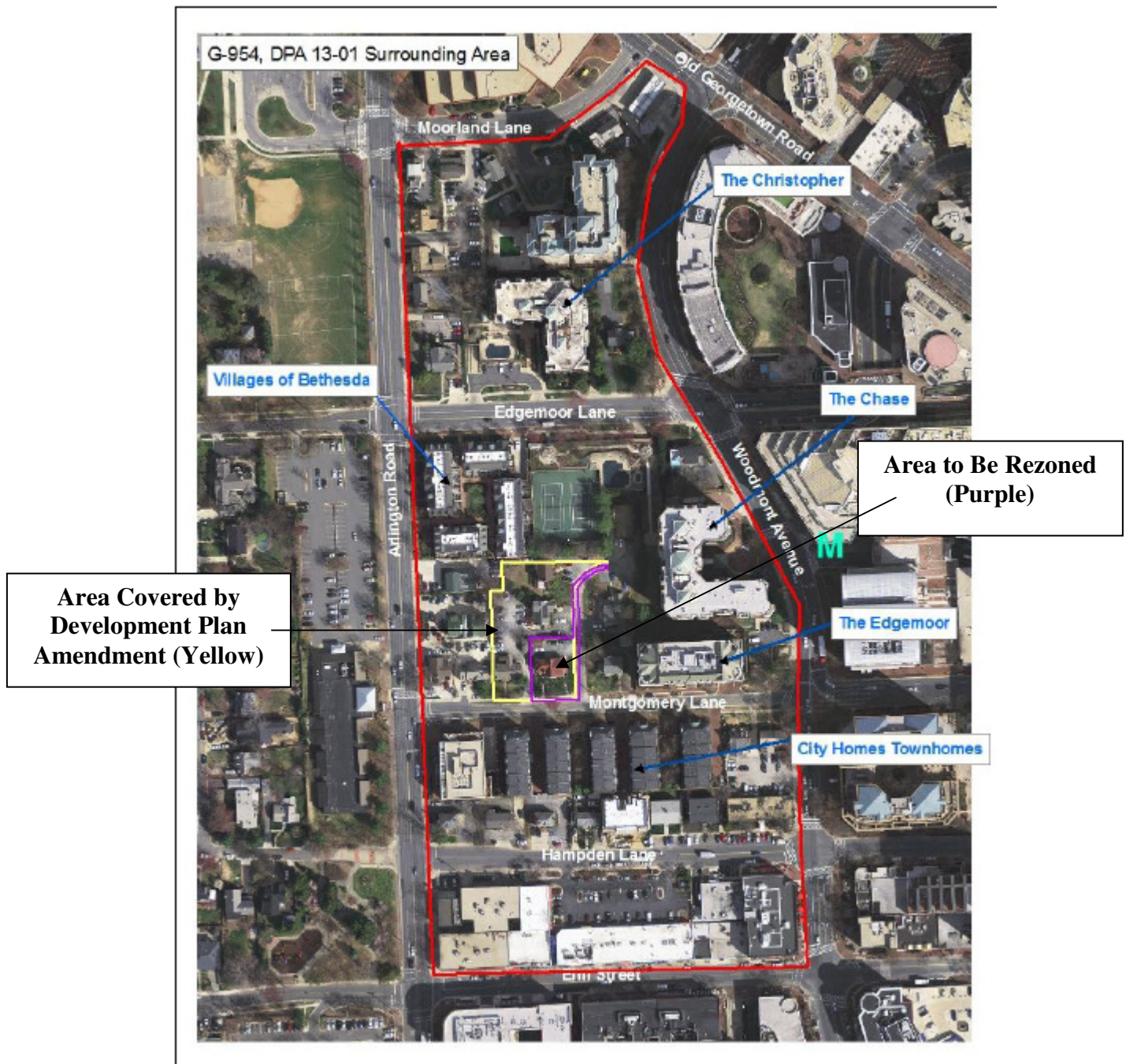
To unify development of the previously zoned property and Lot 26, the Applicant seeks to amend the development plan approved in LMA G-843 (DPA 13-01). The proposed amendment not only expands the land area subject to the development plan, it also makes significant changes to the building design. A map from the initial Zoning Hearing Examiner's Report in LMA G-843 (Exhibit 101(d)), shows the location of Lot 26 in relation to the property rezoned in LMA G-843:





An aerial photograph from the Technical Staff Report that shows the combined area of the development plan and the rezoning request (Exhibit 54, p. 6) is reproduced on the next page.

Currently, the properties subject to the development plan amendment and the rezoning request are improved with single-family detached homes that house commercial offices and retail businesses. 1/11/13 T. 35-36.



Staff reports that the property is situated approximately 950 feet from the Bethesda Metro station, which is within standard walking distance. Exhibit 54, p. 4. Staff advises that there are no significant environmental issues on the site. *Id.* at 32. .



The Technical Staff Report included these photographs of the property subject to the rezoning (i.e., Lot 26) (Exhibit 54):

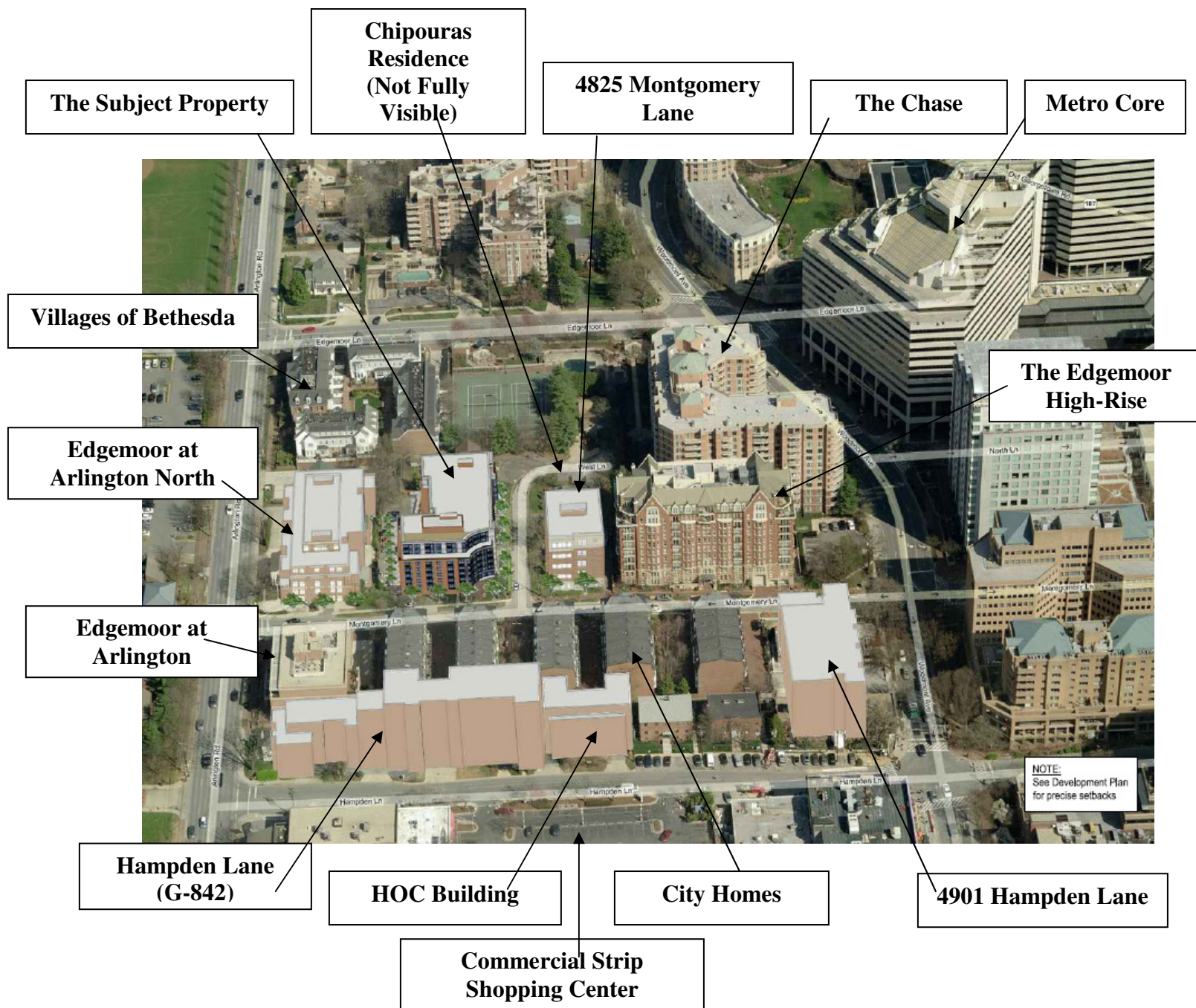


### **B. Surrounding Area and Adjacent Development**

The surrounding area must be delineated in a floating zone case for the purpose of determining the compatibility of the proposed development. Technical Staff delineated the boundaries of the “surrounding area” as Moorland Lane to the north, Arlington Road to the west, Woodmont Avenue to the east, and Elm Street to the south. This includes the entire Transit Station Residential District designated in Sector Plan and is shown on the following page. The parties agreed with Technical Staff’s delineation, although those opposing the application argue that because of its unique designation as a “Mixed Street” in the Sector Plan, projects fronting Montgomery Lane should carry more weight when determining the compatibility of the proposed development. 4/17/13 T. 215.

There are several approved and developed buildings in the immediately surrounding area; In order to sort through the competing interests in this case, the Hearing Examiner found the following exhibit (Exhibit 83) submitted by the Applicant helpful in assessing the character of the surrounding area. This aerial includes existing development, but also inserts conceptual drawings of approved but unbuilt development. Several of the buildings were referred to by

specific names at the public hearing to clarify the record in this case, as many of the names incorporate the term “Edgemoor.” For the Council’s convenience, the Hearing Examiner includes these labels on the aerial photograph (Exhibit 83) shown below:



Several buildings in the defined area were built prior to adoption of the 1994 Sector Plan.

These include two high-rise multi-family buildings, the Chase and the Christopher, both of

which are approximately 120 feet in height. Exhibits 54, p. 7; 101(f), p. 6. The below-grade parking garage for the Chase is located directly to the north of the subject property and includes an outdoor recreation area on top for residents of the Chase. Exhibit 54, p. 7. A single-family home owned by Mr. and Mrs. Theodore Chipouras confronts the property across West Lane and remains within the R-60 Zone. Exhibit 38(nn).

Developments built after adoption of the Sector Plan include the Edgemoor Condominium (Edgemoor High-Rise), a 10-story multi-family building rising to a height of 100 feet. Exhibit 54, p. 7. At the time of zoning approval (G-763), the Edgemoor High-Rise intended to provide between 147 and 149 units, including 20 moderately priced dwelling units. Exhibit 102(f). While developed to its full height, the High-Rise now contains only 52 condominium units and no MPDUs. 4/9/13 T. 269-270.<sup>3</sup> The Council found that the height substantially complied with the 65-foot height limit recommended by the Sector Plan and was compatible with the surrounding area. The Hearing Examiner justified the excess height by the property's location immediately south of the 120-foot Chase and confronting much higher buildings in the CBD Core. Because of its unique location, the Hearing Examiner found that the Edgemoor would not "create a precedent for deviation from the height limits" set in the Sector Plan. Exhibit 106(f), p. 14. The Hearing Examiner in that case also noted that the six-story development recommended by the Sector Plan had not materialized because market conditions made it uneconomical due to the need to provide structured parking. *Id.*

The rezoning of the High-Rise was considered in conjunction with a rezoning and development plan amendment for City Homes, a development of 29 single-family attached townhouses (LMA G-769) and no MPDUs. At the time of the rezoning, City Homes was approved for development at 27 dwelling units per acre, well under the minimum of 45 dwelling

---

<sup>3</sup> The Edgemoor High-Rise apparently met its MPDU requirements by transferring land to the Montgomery County for the HOC building. Exhibit 106(o).



units per acre recommended by the Sector Plan. The developer of the Edgemoor High-Rise sought to “transfer” the unused density from City Homes to the Edgemoor High-Rise. Technical Staff advises that these units are 48-feet high, although this is the source of controversy in this case. Exhibit 54, p. 7.

The Edgemoor at Arlington (Edgemoor Low-Rise), located in the southeast corner of the intersection of Montgomery Lane and Arlington Road, is 35-feet high along Arlington Road and stepping up to 46 feet high proceeding to the east. It contains 12 multi-family condominium units and no MPDUs for a density of 27 units per acre. The Edgemoor at Arlington North contains 31 condominium units and has 4 MPDUs for a density of 35 dwelling units per acre. It also steps up in height from 35 feet along Arlington Road to 48 feet adjacent to the subject property. The Villages of Bethesda (VOB), northwest of the subject property, is located in the southeast quadrant of the intersection of Arlington Road and Edgemoor Lane. The VOB is a townhouse community consisting of 21 dwelling units with no MPDUs at a density of 23 dwelling units per acre. These units rise to a maximum height of 42 feet. Directly east of the subject property (between the High-Rise and West Lane) is 4825 Montgomery Lane, recently approved by the District Council for a maximum of 4 dwelling units (LMA G-908, approved December 4, 2012, in Resolution 17-626). The Council approved a maximum 65-foot height at the time of zoning; the record reflects that this has been reduced at site plan to 60 feet with a 4-foot parapet. Exhibits 54, 84.

The Council has also recently approved developments along Woodmont Avenue and Hampden Lane. These include 4901 Hampden Lane (LMA G-819, initially approved July 25, 2006), at the northwest corner of Hampden Lane and Woodmont Avenue. That development originally proposed a density of between 50-70 dwelling units. Exhibit 102(d). In 2012, the minimum density was reduced to between 40 and 70 dwelling units per acre to permit the

developer to respond to market demand for larger units. Council Resolution 17-559 (adopted November 11, 2012).<sup>4</sup> Exhibit 102(k). Approved for a maximum height of 70 feet, an exhibit submitted by the Applicant indicates that this building will now contain 34 dwelling units at a density of 48 dwelling units per acre. Exhibit 84. This approval was accompanied by an increase from 12.5% to 15% of the MPDUs provided. Resolution 17-559.

Further to the west along Hampden Lane is a building developed by the Montgomery County Housing Opportunities Commission (HOC). The HOC Building provides “transitional housing” for individuals with very low or no incomes who will move as their income increases, as opposed to those who intend to occupy the unit long term. 4/9/13 T. 289. Land for the HOC building was contributed by the developer of the Edgemoor High-Rise to meet its affordable housing requirement. Subsequently, the HOC swapped the land donated for a parcel owned by the developer of Hampden Lane so that the latter project would be a more cohesive development. Exhibit 106(o). The HOC Building contains 12 dwelling units and testimony at the public hearing indicated that the building is approximately 48 feet high. Exhibit 54, 4/17/13 T. 211. Traveling west on Hampden Lane, the District Council approved a development located in the northwest corner of the intersection of Hampden Lane (G-842, approved September 26, 2006 in Resolution 15-1617). Exhibit 106(o). This building steps back from lower heights along Arlington Road to a maximum of 71 feet in height proceeding east. Because there is no setback between this development and several rows of the City Homes townhouses, the Applicant included “cut-outs” to provide light to City Homes. 4/17/13 T. 242.

Technical Staff does not characterize the surrounding area except to state that it is primarily residential with limited commercial uses. Several of those opposing the application assert that Montgomery Lane has a unique character different than other streets within the TS-R

---

<sup>4</sup> Because only excerpts from the Council’s opinion in DPA 12-02 are in the record, the Hearing Examiner takes official notice of the full text of Resolution 17-559. OZAH Rules of Procedure, Rule 4.8.

District because of its design as a “Mixed Street” in the Sector Plan. They also argue that, unlike other streets in the neighborhood which front commercial uses, all approved and constructed development along Montgomery Lane is exclusively residential. 4/17/13 T. 213-215; 4/29/13 T. 33.

The area that will be most directly impacted by the use determines the “surrounding area” in a rezoning case. Clearly, the area demarcated by Staff is a logical boundary defining the impact of this development, as the entire District is within walking distance of the property. Based on this criterion, the Hearing Examiner finds that Staff’s delineation of the surrounding area is reasonable. As to the characterization of the area, the Hearing Examiner agrees with Technical Staff that it is primarily residential with limited commercial uses, but finds that Montgomery Lane is unique in its design and will exclusively consist of single-family attached and multi-family residential uses.

### **C. Prior Zoning History**

The Applicant proposes to amend the development plan approval in G-843 to include the additional land area requested for re-zoning. Because of its significance to this case, the Hearing Examiner includes a brief summary of that approval.

The property rezoned in LMA G-843 included Lots 24, 25, and 27 of the Edgemoor Subdivision. The development plan originally proposed up to 50 market rate units and 7 MPDUs, for a total density of 74 dwelling units per acre. Exhibit 101(c). Because of the L-shaped configuration of the site, the project consisted of two four- and six-story “wings.” The four-story wing fronted on Montgomery Lane and had a significant step back until rising to 65 feet nearer the northern end. The building had a 15-foot setback from the sidewalk along Montgomery Lane. Exhibit 101(d). While the Hearing Examiner in LMA G-843 concluded that the project technically met the recommendations of the Sector Plan, he found that the building’s

massing was incompatible with the adjacent properties. *Id.* Specifically, he concluded that the six-story portion of the building was incompatible with the Villages of Bethesda, the single-family detached structures on Lot 26, and the single-family detached dwelling confronting the property on West Lane. The District Council agreed with the Hearing Examiner's recommendation to remand the case to permit the Applicant to revise the development plan, in part, to address these issues. *Id.*

After remand, the Zoning Hearing Examiner recommended approval of a revised application requesting a minimum of 40 and maximum of 48 dwelling units (including six MPDUs), for a maximum density of 73 dwelling units per acre. *Hearing Examiner's Supplemental Report and Recommendation*, LMA G-843, p. 3 (June 21, 2007).<sup>5</sup> Exhibit 101(c). The Hearing Examiner, found the changes to the building massing sufficient to address the Council's compatibility concerns, as did the Council. Exhibit 101(c). A diagram from the Hearing Examiner's Supplemental Report and Recommendation illustrates these changes (reproduced on the following page).

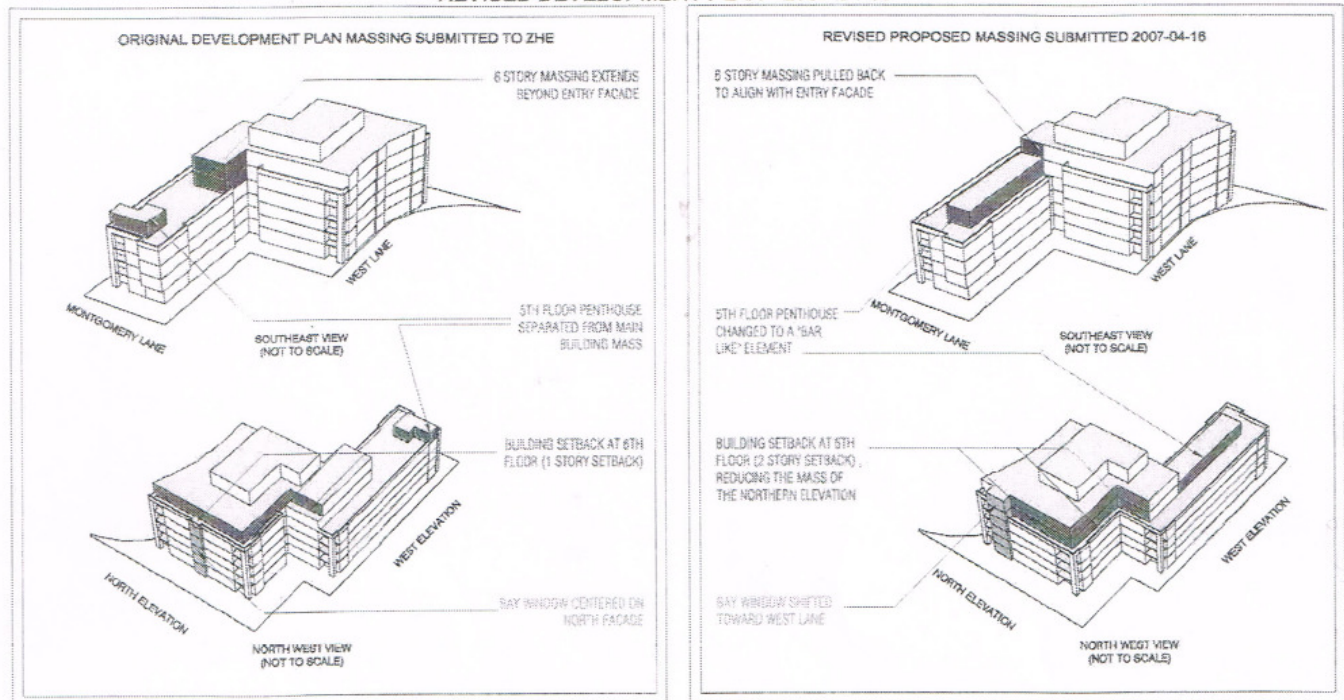
The approved development plan contained lengthy binding elements to respond to concerns about the development's compatibility with the surrounding area. Technical Staff included these in their recommendation on this application (Exhibit 54):

1. The building will have a maximum height of 65 feet of 65 feet, as measured from the building height measure point along the West Lane top of curb, whose elevation is 335.2, and as shown on the development plan.
2. The development will have a maximum density of 2.5 FAR.
3. The development will have a maximum of 48 units and a minimum of 40 units.
4. The development will provide 12.5 percent of the units ultimately permitted for construction as MPDUs.
5. The development will provide a minimum of 10 percent public use space.

---

<sup>5</sup> The Hearing Examiner takes official notice of the Zoning Hearing Examiner's Supplement Report and Recommendation dated June 21, 2007, and the District Council's Order of Remand dated March 20, 2007.

COMPARISON BETWEEN: ORIGINAL ZHE DEVELOPMENT PLAN AND  
REVISED DEVELOPMENT PLAN - 2007-04-16



BETHESDA WEST LANE

MONTGOMERY CO. - BETHESDA, MD

THE HOLLADAY CORPORATION

SK&amp;I

A27

**Comparative Massing Diagram  
from Supplemental Hearing  
Examiner's Report in LMA G-843**

6. The development will provide a minimum of 20 percent active/passive recreational space.
7. The development will provide an evergreen landscape screen of not less than ten (10) evergreen trees of not less than 8 to 10 feet tall at time of planting to be planted along the northwestern property line to serve as a landscape buffer.
8. Any exposed terrace or retaining wall along the western property line will be improved with similar materials as façade of the building.
9. The development will be set back from the northern property line a minimum of 20 feet exclusive of bay windows and other building projections.
10. The western façade of the development will be located six feet from the western property line, exclusive of bay windows and other building projections.
11. The western façade of the development will include a minimum of 20 percent windows.

12. The western façade of the development will include green screens.
13. The garage door to the below-grade parking will be provided underneath and within the building.
14. The Applicant will enter into a construction agreement with the Villages of Bethesda prior to the commencement of construction which shall include, but not be limited to underpinning provisions, crane swing provisions and an agreement to conduct pre and post construction evaluations of the garage and foundation of the Villages of Bethesda.
15. Any fence needed along the western property line as a result of the grade differential will be an open rail design.
16. Additional façade detailing will be provided along the Western Façade.
17. The Applicant will dedicate 2 ½ feet along the West Lane frontage of the property and subject to DPTW, DPS, and M-NCPPC requirements will provide as follows: 10' paving from center line to face of curb; 5' planting strip from face of curb to sidewalk; 5' sidewalk; and 4' building setback from the property line.
18. In connection with the development, Applicant shall pave and provide curb along West Lane in its entirety to 22 feet in width. That portion of West Lane in excess of 22 feet at northeast terminus shall only be repaved to current paved boundaries as delineated on the plan. Paving of southern terminus of West Lane to exceed 22 feet in width in order to provide appropriate intersection with Montgomery Lane, as determined by DPW&T. See proposed West Lane Road Section, this sheet.
19. Declarant and/or its successors will maintain on-site landscaping.
20. Development to be LEED certified, certification to be achieved by implementation of various green building elements. Provision of green building elements such as partial sedum (green) roof, energy star appliances, and green interior finishes package option and recycled building materials.
21. The following features will form the basis for the final design to be determined at site plan:
  - The number of stories and general massing, excluding balconies and bay window projects, will be as provided on elevations and 3-D drawings set forth on development plan.
  - Predominately masonry façade, excluding [sic] accent details, which may include, but not be limited to brick, stone, or manufactured stone, precast or ceramic tiles.
  - Landscaping to include street trees along West Lane and Montgomery Lane in conformance with Bethesda streetscape plan, landscaping along mews, and ground cover along the western property line.
  - Windows on all facades.
  - Flat roofs.
  - Vehicular access to be located in northeast corner of property off West Lane.
  - On-site parking located below grade.
  - Final location and configuration of 5<sup>th</sup> floor roof top access penthouse to be determined at site plan.

## **D. Proposed Development**

### **1. Development Concept and Applicant's Vision for the Project**

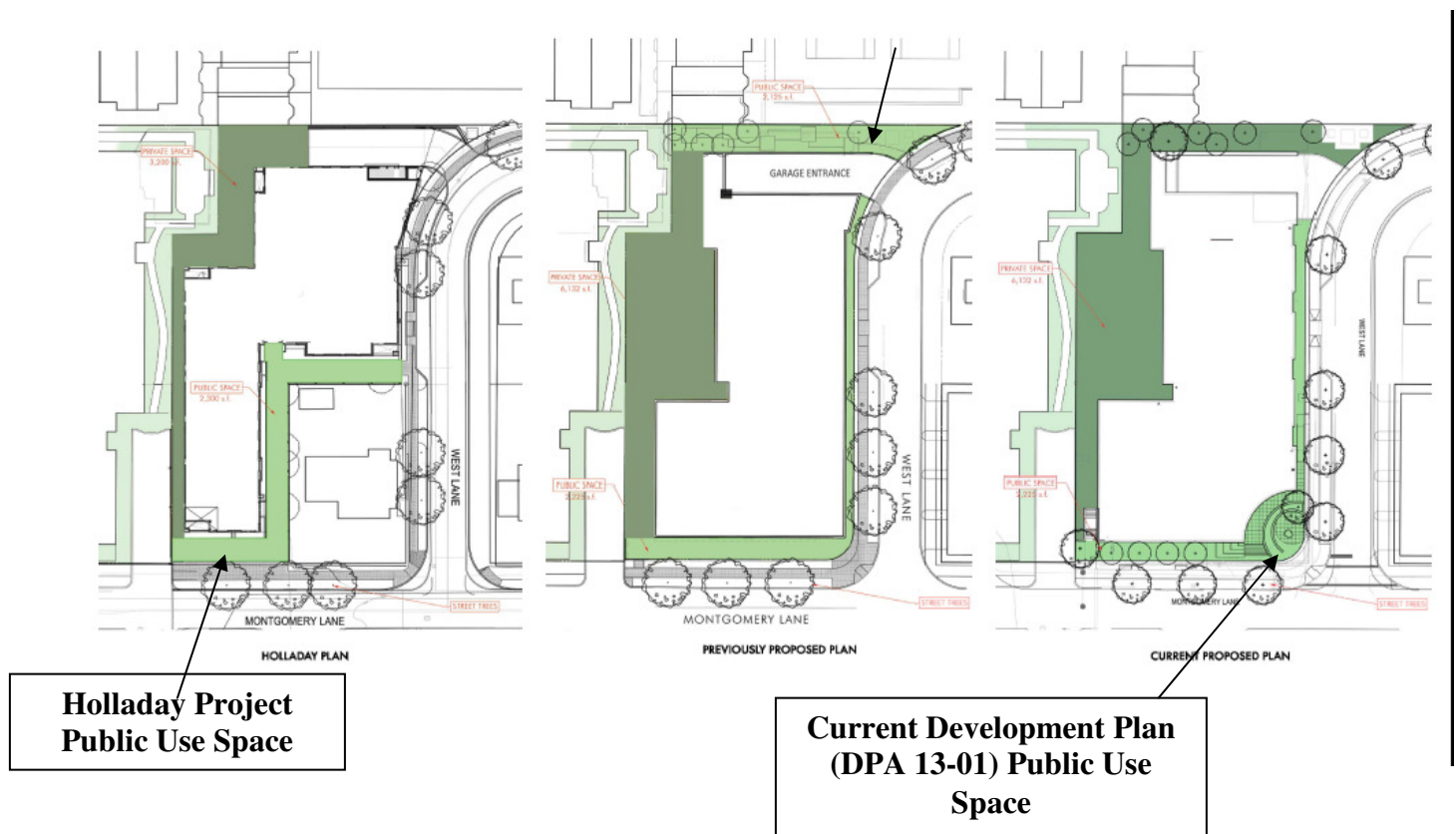
Unlike the former development plan, the development plan now includes Lot 26, eliminating the need for the “winged” configuration of the Holladay Project. The Applicant proposes a building at a maximum height of 70 feet and a maximum FAR of 3.05. It also commits to a minimum number of 100 dwelling units and a maximum of 120 dwelling units *provided* that the 3.05 FAR is approved. Exhibit 127. The maximum density requested equates to 135 dwelling units per acre.

According to the Applicant's representative, Ms. Ashley Wiltshire, the addition of Lot 26 permitted the Applicant to design a more efficient building and enables them to further the County goals to provide higher density, diversity in housing types and affordable housing units. 1/15/13 T. 36-37. She testified that the existing neighborhood consists of larger condominium units averaging between 1,700 and 2,000 square feet. The Applicant proposes units that range between 585 square feet and 1,200 square feet because it believes this is more consistent with goals of the Bethesda Sector Plan. 1/11/13 T. 38. According to her, the average unit size of 860 square feet will diversify housing types within the Sector Plan area and create an opportunity to introduce rental units into the surrounding neighborhood. She acknowledges, however, that the binding elements do not require the development to be rental units and the Applicant desires flexibility in this regard. The Applicant believes that designating 15% of the units as MPDUs is also important because there are no existing MPDUs on Montgomery Lane itself, although the HOC Building on Hampden Lane does have affordable units. 1/11/13 T. 38-41.

### **2. The Applicant's Original Development Plan**

The FAR, density, and maximum height have remained the same in both versions of the current development plan amendment (DPA 13-01). The major difference is the location of the

public use space. The original development plan designated 14% of the site for public use space, a significant portion of which was located at the northern end of West Lane. The differences in the locations of the public use space (highlighted in light green) between the Holladay Project, this original application and the current application are shown in an exhibit submitted by the Applicant (Exhibit 85) below:



The building's mass as originally submitted is shown in a rendering of the Montgomery and West Lane elevations included in the Technical Staff Report (Exhibit 54, p. 22, on page 21).

While Staff noted that the building shown in the initial version of the development plan amendment was more “prominent” than the Holladay Project, it found that the more rectangular lot shape created a “defined street edge.” Exhibit 54, p. 22. It also found that a nine-foot “step back” beginning at the sixth and seventh floor sufficiently mitigated the mass of the building



**Nine-Foot Step Back**



along Montgomery Lane. *Id.* at 12. To ensure that the public use space was clearly devoted to public use, Staff recommended that the 15-foot setbacks along Montgomery and West Lanes be incorporated as binding elements and that the following binding element be added to the plan:

16. Public Use Space provided along the northern property line must be accessible at grade and must include activating elements that clearly indicate the area is intended for public use.

Staff concluded that the building's 70-foot height, which exceeds the Sector Plan's recommended 65-foot height, was permissible because of the need to accommodate the 15% MPDUs. *Id.* at 20. Staff noted that two other developments in the surrounding area, Hampden Lane and 4901 Hampden Lane, were both approved with a height of 70 feet to accommodate additional MPDUs. *Id.*

Staff recommended approval of the design despite several variations from the urban design guidelines in the Sector Plan because the project provides more affordable units in the area. While Staff considered this a "mid-rise" building, it found that the proposed development met the Plan's recommendation for a "high-density, low-rise" urban village for the TS-R District

it was necessary to ensure inclusion of MPDUs.<sup>6</sup> *Id.* While acknowledging that this exceeded the heights recommended in the Plan, Staff found that a transition in heights proceeding from the Metro Core would still occur because of the intervening Edgemoor High-Rise, which is 100 feet high. *Id.* at 23. A rendered illustration of the transition in heights from east to west, prepared by the Applicant, is included in the Technical Staff Report (Exhibit 105(a)):



The Sector Plan also recommends creating a residential image by using hip roofs, gables, turrets, and other types of pitched roof lines. The proposed development uses a flat roof, which Staff found acceptable because other design features created a “modern, residential image.” *Id.* These features included the building’s red brick base, corresponding to the materials used in other developments along the street, the stepped back metal top breaking up the height of the building, a metal and glass corner element to break up its width, and balconies on the first floor. *Id.* While the application did not follow the Plan’s recommendation to have individual entrances on the first floor, Staff found that the location of the primary entrance at the corner of Montgomery and West Lanes accommodates visitors and residents and permits more open space. *Id.*

---

<sup>6</sup> According to Staff, low-rise buildings are those under five stories in height, mid-rise buildings are between five and nine stories, and high-rise buildings have more than 9 stories. *Id.*

Staff also concluded that the original development plan met the purposes of the TS-R Zone because of the property's proximity to the Bethesda Metro station and the potential to add more residential density and smaller units to the area. *Id.* at 25. The design minimized detrimental effects to adjacent properties while at the same time offering housing for varying income levels, according to Staff. *Id.*

While the Planning Board approved the original development plan, it recommended several changes to the design to increase the project's compatibility with the surrounding area. (Exhibit 55):

To achieve greater compatibility with the surrounding neighborhood, the Planning Board recommends the public use space be moved to a location along the Montgomery Lane site frontage rather than along the northern property lines, adjacent to the parking garage entrance. Such a revision will result in public use space that is more accessible and functional for the public. The Planning Board also recommends that the Applicant explore alternative building designs for the 6<sup>th</sup> and 7<sup>th</sup> floors to break up the bulk and mass of the building.

Three members of the Board found the density proposed compatible with the neighborhood; Chair Carrier felt that development should be limited to 100 dwelling units (including MPDUs). The Board concluded that Montgomery Lane experiences problems resulting from illegal parking by service vehicles and recommended that the Applicant should "incorporate measures" to prevent illegal parking near the building's entrance. The Planning Board recommended that the Applicant incorporate four additional binding elements into the development plan. These included:

15. The applicant will enter into a construction agreement with the property owner of 4828 West Lane prior to commencement of construction to mitigate off-site impacts caused by construction activities.
16. The applicant will bury or screen the transformer units along the northern property line.
17. The applicant will meet the public use space requirement for the project in front of the building along Montgomery Lane and West Lane.

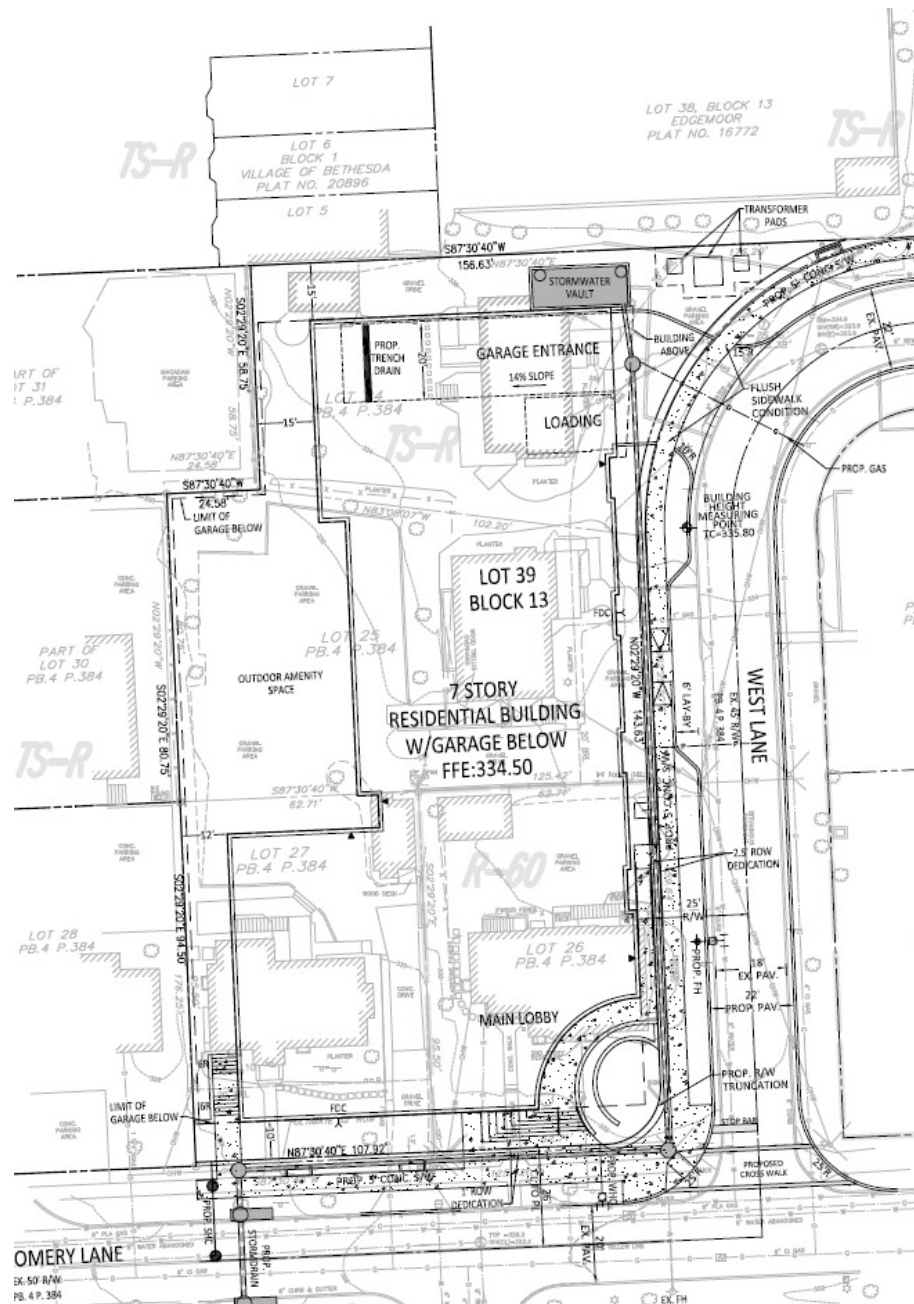
18. The primary building entrance will be accessible only by residents of the building. Service providers will not be permitted to use the front door of the building.

*Id.* at 3.

### **3. Current Version of the Development Plan**

To address the Planning Board's concerns, the Applicant proposed a revised development plan at the January 11, 2013, public hearing. While there are several changes to the plan, the major differences are designed to further mitigate the building's mass and make the public use space more functional. The Applicant sought to achieve this by incorporating a concave scallop into the building design at the intersection of Montgomery and West Lanes, and by increasing the roof "step back" back from 9 to 12 feet. 5/13/13 T. 27-28. The western setback of the building was reduced from 15 feet to 12 feet. Exhibit 105(a). The current version of the development plan (Exhibit 127) is shown on the following page. The "scalloped" area consists of 615 square feet. When combined with the area to the right-of-way line, the scallop will be approximately 1,000 square feet. 4/17/13 T. 46. The setbacks along the northern property line have been preserved, although these are now identified as private amenity space. As a result, the total amount of public use space has been reduced from 14% to 10%, which is the minimum required in the TS-R Zone. Exhibit 105(a). While a binding element mandates a 10-foot building setback from Montgomery Lane, Mr. Irish testified that the building face will be slightly more than 12 feet from the closest edge of the sidewalk. 4/17/13 T. 33.

Mr. Marius Radulescu, the Applicant's expert architect, testified that the revised design addresses the basic elements of compatibility with the surrounding area (i.e., height, setbacks, density) typically considered at the zoning stage. 5/13/13 T. 23. The "scallop" on the southeast



**Development Plan  
Exhibit 127**

corner of the building rises to the full height of the building, thus reducing the building's frontage on Montgomery Lane from 120 feet to approximately 80 feet and mitigating its mass along the southern frontage. Mr. William Landfair, the Applicant's expert land planner, opined that the public use would function as a pocket park and enhance the pedestrian environment.



The Montgomery Lane elevation, submitted by the Applicant (Exhibit 73) as well as an artist's rendering of the pocket park (Exhibit 76) are shown below.

**Montgomery Lane Façade  
Exhibit 73**



**Rendering of Public Use Space  
Exhibit 76**

Mr. Radulescu testified that he attempted to blend the height of the very large Edgemoor High-Rise to the east and the lower heights along Arlington Road to the west. In addition to this east-west transition, he also attempted to reflect the City Homes project in terms of massing the proposed development. The City Homes are approximately 50 feet high. The 12-foot roof top step back on the top two floors is at approximately the same height. In his opinion, the building's step back in height at 50 feet and its maximum height of 70 feet create a compatible north-south transition with City Homes and an east-west transition along Arlington Road. 4/15/13 T. 70-72.

The Applicant also incorporated undulations of approximately one foot in depth along the West Lane frontage so that it reads like townhomes. 5/13/13 T. 27-32. A rendered detail of this articulation is shown on the Applicant's Exhibit 75, reproduced on the next page.

Twenty-six percent of the site area will constitute private amenity area. These areas are located within the northern and western setback areas and are shown on Exhibit 85 on page 20 of this Report. The Applicant has committed to a binding element limiting lighting in the western setback area to 24 inches in height to address the concerns of the owner of the Edgemoor at Arlington North. 5/13/13 T. 145. The roof top will include a green roof (which has not yet been designed). It also may include additional private amenity area. 4/16/13 T. 97-101.

Mr. Radulescu testified that the Applicant worked hard to mitigate the additional FAR needed to accommodate the MPDUs. He testified that the building could not make many more small adjustments, such as moving the setbacks further back. Residential buildings have a very precise program that must be followed. The program is driven by regulations (such as ADA requirements) and market demands. For instance, the units became "pinched" when they increased the step back from nine to twelve feet. Increasing the step back further could further constrain the units so that they do not meet current regulations or market demand. They



KEY ELEVATION



attempted to mitigate the building's height by reducing the typical spacing between slabs; they reduced the typical standard residential ceiling height from 10' 7" from slab to slab to a nine-foot distance between slabs to accommodate the additional density. He opined that the design is an optimal means of balancing these competing factors. 4/15/13 T. 19-21.

Both Technical Staff and the Planning Board reviewed the revised version of the development plan amendment. Exhibits 105, 105(a). Both recommended approval, this time more enthusiastically. Technical Staff concluded that the public use space has "an appropriate form and function" because it is more visible and the prominent location "provides the desired visibility." Exhibit 105(a), p. 5. Staff continued to maintain the importance of providing a cohesive building edge along Montgomery Lane. Staff did not find the reduced setback along the western property line compatible, however, and recommended a binding element mandating a 15-foot setback. *Id.* at 2.

The Planning Board agreed with Staff that the re-located public use space would be more useable by the public, but found the 12-foot setback along the western property line compatible. It found that the revised design was "more compatible" with the surrounding area because the curved façade "softens" the rectangular planes of the building. Exhibit 105. It also found that increase in the length of the roof top step back combined with the contrasting building materials on the upper floors "effectively reduced the bulk and mass of the building." The Board also found the density proposed "necessary to achieve a critical mass on the site where 15% MPDUs can be accommodated within close proximity to transit." *Id.* at 3. The Board recommended that the binding elements include those formerly recommended and added two additional binding elements:

19. The sixth and seventh floors of the building will incorporate a 12 foot step back from the face of the building for the portion of the building that runs parallel to Montgomery Lane.

20. The public use space concept will substantially conform to the development plan amendment drawing and rendering as shown on pages 4 and 5 of the Technical Staff Report dated February 25, 2013. *Id.* at 4.

#### **4. Development Plan & Binding Elements**

Pursuant to Code § 59-D-1.1, development in the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. The Development Plan consists of several components that are binding on the applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment. The land use plan is shown in the preceding section of this Report, the textual binding elements are included on the next page. Exhibit 127.

The Development Plan also includes a series of tables, the first describing legal information, showing right-of-way dedications, and comparing the minimum zoning standards to those proposed by the development, and the second table comparing the parking spaces required to those provided. Both tables are shown on page 33.

The Applicant is providing 123 spaces for the 120 units because the Zoning Ordinance requires only ½ a parking space for each MPDU unit. T. 325. If each unit is assigned one parking spot, they will have two spaces for visitors, assuming the project is developed to the maximum density. T. 326.

## **BINDING ELEMENTS:**

1. THE BUILDING WILL HAVE A MAXIMUM HEIGHT OF 70 FEET, AS MEASURED FROM THE BUILDING HEIGHT MEASURE POINT ALONG THE WEST LANE TOP OF CURB, WHOSE ELEVATION IS 335.8, AND AS SHOWN ON THE DEVELOPMENT PLAN.
2. THE DEVELOPMENT WILL HAVE A MAXIMUM DENSITY OF 3.05 FAR.
3. THE DEVELOPMENT WILL PROVIDE 15 PERCENT OF THE UNITS ULTIMATELY PERMITTED FOR CONSTRUCTION AS MPDUs, PROVIDED THAT THE DENSITY APPROVED FOR CONSTRUCTION IS 3.05 FAR.
4. THE DEVELOPMENT WILL PROVIDE A MINIMUM OF 10 PERCENT PUBLIC USE SPACE
5. THE DEVELOPMENT WILL PROVIDE A MINIMUM OF 20 PERCENT ACTIVE / PASSIVE RECREATIONAL SPACE.
6. THE WESTERN FACADE OF THE DEVELOPMENT WILL INCLUDE A MINIMUM OF 20 PERCENT WINDOWS.
7. THE APPLICANT WILL ENTER INTO A CONSTRUCTION AGREEMENT WITH THE VILLAGES OF BETHESDA PRIOR TO THE COMMENCEMENT OF CONSTRUCTION WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO UNDERPINNING PROVISIONS, CRANE SWING PROVISIONS AND AN AGREEMENT TO CONDUCT PRE AND POST CONSTRUCTION EVALUATIONS OF THE GARAGE AND FOUNDATION OF THE VILLAGES OF BETHESDA.
8. APPLICANT WILL DEDICATE 2 ½ FEET ALONG THE WEST LANE FRONTAGE OF THE PROPERTY AND SUBJECT TO DOT, DPS AND M-NCPPC REQUIREMENTS WILL PROVIDE 11' PAVING FROM CENTER LINE TO FACE OF CURB.
9. IN CONNECTION WITH THE DEVELOPMENT, APPLICANT SHALL PAVE AND PROVIDE CURB ALONG WEST LANE IN ITS ENTIRETY TO 22 FEET IN WIDTH EXCEPT FOR THAT PORTION OF WEST LANE FROM THE CENTER LINE EAST, ALONG THE FRONTAGE OF LOT 20. THAT PORTION OF WEST LANE IN EXCESS OF 22 FEET AT NORTHEAST TERMINUS SHALL ONLY BE REPAVED TO CURRENT PAVED BOUNDARIES AS DELINEATED ON THE PLAN. PAVING OF SOUTHERN TERMINUS OF WEST LANE TO EXCEED 22 FEET IN WIDTH IN ORDER TO PROVIDE APPROPRIATE INTERSECTION WITH MONTGOMERY LANE, AS DETERMINED BY DOT. SEE PROPOSED WEST LANE ROAD SECTION, THIS SHEET.
10. DECLARANT AND/OR ITS SUCCESSORS WILL MAINTAIN ON-SITE LANDSCAPING.
11. DEVELOPMENT WILL COMPLY WITH THE MONTGOMERY COUNTY GREEN BUILDINGS LAW AND ACHIEVE A MINIMUM CERTIFIED LEVEL RATING IN THE APPROPRIATE LEED RATING SYSTEM, OR EQUIVALENT RATING IN ANOTHER ENERGY AND ENVIRONMENTAL STANDARD AS VERIFIED BY DPS.
12. THE FOLLOWING FEATURES WILL FORM THE BASIS FOR THE FINAL DESIGN TO BE DETERMINED AT SITE PLAN;
  - PREDOMINATELY MASONRY FAÇADE, EXCLUDING ACCENTING DETAILS, WHICH MAY INCLUDE, BUT NOT BE LIMITED TO BRICK, STONE, OR MANUFACTURED STONE, PRECAST OR CERAMIC TILES.
  - LANDSCAPING TO INCLUDE STREET TREES ALONG WEST LANE AND MONTGOMERY LANE IN CONFORMANCE WITH THE BETHESDA STREETScape STANDARDS, AS AMENDED; AND LANDSCAPING PROVIDED ON THE PLAZA EDGES ALONG THE WESTERN PROPERTY LINE.
  - FLAT ROOFS
  - VEHICULAR ACCESS TO BE LOCATED IN NORTHEAST CORNER OF PROPERTY OFF OF WEST LANE.
  - ON-SITE PARKING LOCATED BELOW GRADE.
13. THE MANAGEMENT ENTITY OF THE BUILDING (WHETHER RENTAL OR CONDOMINIUM) MUST REQUIRE THAT ALL SERVICE DELIVERIES OCCUR THROUGH THE SERVICE ENTRY LOCATED ON WEST LANE.

14. APPLICANT WILL SCREEN THE TRANSFORMER UNITS ALONG THE NORTHERN PROPERTY LINE.
15. APPLICANT WILL ENTER INTO A CONSTRUCTION AGREEMENT WITH THE PROPERTY OWNER OF 4828 WEST LANE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION TO MITIGATE OFF-SITE IMPACTS CAUSED BY CONSTRUCTION ACTIVITIES.
16. THE ABOVE GRADE FACADE OF THE BUILDING SHALL BE SET BACK A MINIMUM OF 15 FEET FROM THE NORTHERN PROPERTY LINE.
17. THE OUTDOOR PRIVATE AMENITY SPACE, LOCATED ON THE WESTERN PORTION OF THE PROPERTY, WILL BE SUBSTANTIALLY IN KEEPING IN TERMS OF SIZE AND DIMENSIONS WITH THE DEVELOPMENT PLAN SUBMITTED IN FEBRUARY, 2013.
18. THE SIXTH AND SEVENTH FLOORS OF THE BUILDING WILL INCORPORATE A 12 FOOT STEP BACK FROM THE FACE OF THE BUILDING FOR THE PORTION OF THE BUILDING THAT RUNS PARALLEL TO MONTGOMERY LANE.
19. APPLICANT WILL LIMIT THE HEIGHT OF THE LANDSCAPE LIGHTING IN THE PRIVATE OUTDOOR AMENITY SPACE TO A MAXIMUM OF 24".
20. THE PUBLIC USE SPACE CONCEPT WILL SUBSTANTIALLY CONFORM TO THE DEVELOPMENT PLAN AMENDMENT DRAWING AND RENDERING AS SHOWN ON PAGES 4 AND 5 OF THE TECHNICAL STAFF REPORT DATED FEBRUARY 25, 2013.
21. THE BUILDING WILL HAVE A MINIMUM OF 100 DWELLING UNITS AND A MAXIMUM OF 120 DWELLING UNITS, PROVIDED THAT THE APPROVED DENSITY IS 3.05 FAR AND THE MAXIMUM HEIGHT IS 70 FEET.
22. THE MECHANICAL PENTHOUSE WILL BE LOCATED A MINIMUM OF 25 FEET NORTH FROM THE FACE OF THE BUILDING FOR THE PORTION OF THE BUILDING THAT RUNS PARALLEL TO MONTGOMERY LANE.
23. THE LANDSCAPE PLAN, TO BE INCLUDED IN THE SITE PLAN APPLICATION, SHALL INCLUDE PROPOSED LANDSCAPING FOR THE COMMON AREAS ON THE ROOFTOP.
24. NO LAY-BY WILL BE REQUESTED ALONG THE MONTGOMERY LANE FRONTAGE OF THE BUILDING.
25. THE BUILDING WILL BE SETBACK A MINIMUM OF 36 FEET FROM THE EXISTING CENTER LINE OF MONTGOMERY LANE.
26. THE FACADE MATERIALS FOR THE 6TH AND 7TH FLOORS OF THE BUILDING WILL BE LIGHTER IN COLOR THAN THE REMAINING FAÇADE TREATMENT.

The Applicant has included some, but not all, of the Planning Board's recommended binding elements. The Applicant has conditioned its commitment to providing 15% MPDUs with the proviso that the full 3.05 FAR is approved (Binding Element 3). Similarly, the Applicant has committed to a minimum of 100 dwelling units, conditioned upon the approval of a 3.05 FAR (Binding Element 2). It has also removed a binding element requiring access to the parking garage to be located below the grade. *Compare*, Exhibits 105 and 127. The development plan amendment does contain binding elements recommended by Planning Board,

**DEVELOPMENT PROGRAM\*****TS-R DEVELOPMENT STANDARDS**

GROSS TRACT AREA	38,804 SF
MAXIMUM DENSITY WITH MPDU BONUS	3.05 FAR**
MAXIMUM GROSS FLOOR AREA	118,352 SF
DWELLING UNITS PROPOSED	UP TO 120 MULTI-FAMILY
MPDU'S PROPOSED	UP TO 18 UNITS

**PARKING TABULATION**

NO.	TYPE	RATE	REQ. SPACES
5	EFFICIENCIES	@ 1.000 SPACE/UNIT	5.00
0	EFFICIENCIES MPDU	@ 0.500 SPACE/UNIT	0.00
29	1 BEDROOM	@ 1.250 SPACE/UNIT	36.25
6	1 BEDROOM MPDU	@ 0.625 SPACE/UNIT	3.75
42	1 BEDROOM + DEN	@ 1.250 SPACE/UNIT	52.50
7	1 BEDROOM + DEN MPDU	@ 0.625 SPACE/UNIT	4.38
26	2 BEDROOM	@ 1.500 SPACE/UNIT	39.00
5	2 BEDROOM MPDU	@ 0.750 SPACE/UNIT	3.75
120	TOTAL UNITS	BASE RESIDENTIAL PARKING	144.63
		LESS 5% METRO PROXIMITY CREDIT	7.23
		LESS 10% TRANSIT STATION DEVELOPMENT AREA CREDIT	14.46
		TOTAL REQUIRED PARKING	122.94

TOTAL VEHICLE SPACES PROVIDED	123
ACCESSIBLE SPACE (INCLUDING VAN SPACES)	4
VAN ACCESSIBLE SPACES	1

\* MAXIMUM UNIT COUNT OF 120 UNITS, UNIT MIX AND PARKING TABULATION ARE FOR ILLUSTRATIVE PURPOSES; FINAL DETERMINATION TO BE MADE AT TIME OF SITE PLAN.

\*\* STANDARD DENSITY WITHOUT MPDU BONUS IS 2.5 FAR.

**OPEN SPACE**

	REQUIRED	PROPOSED
PUBLIC USE SPACE	2,841 SF	2,841 SF
	10% OF NET LOT	10% OF NET LOT
ACTIVE/PASSIVE	5,682 SF	7,421 SF
	20% OF NET LOT	26% OF NET LOT

<b>Parking and Open Space Tabulations/Exhibit 124</b>
---

including a commitment that the public use space substantially conforms to the representations included in the February 25, 2013, Technical Staff Report and the 12-foot step back at the 5<sup>th</sup> floor (Binding Elements 20 and 18, respectively). In response to concerns raised at the public hearing regarding the location of the mechanical penthouse, the Applicant includes a binding element that the penthouse will be set back from the 7<sup>th</sup> floor façade by a minimum of 25 feet, as shown on the renderings submitted with the application (Binding Element 22). It also added a binding element that the roof top will include landscaped amenity areas (Binding Element 23).

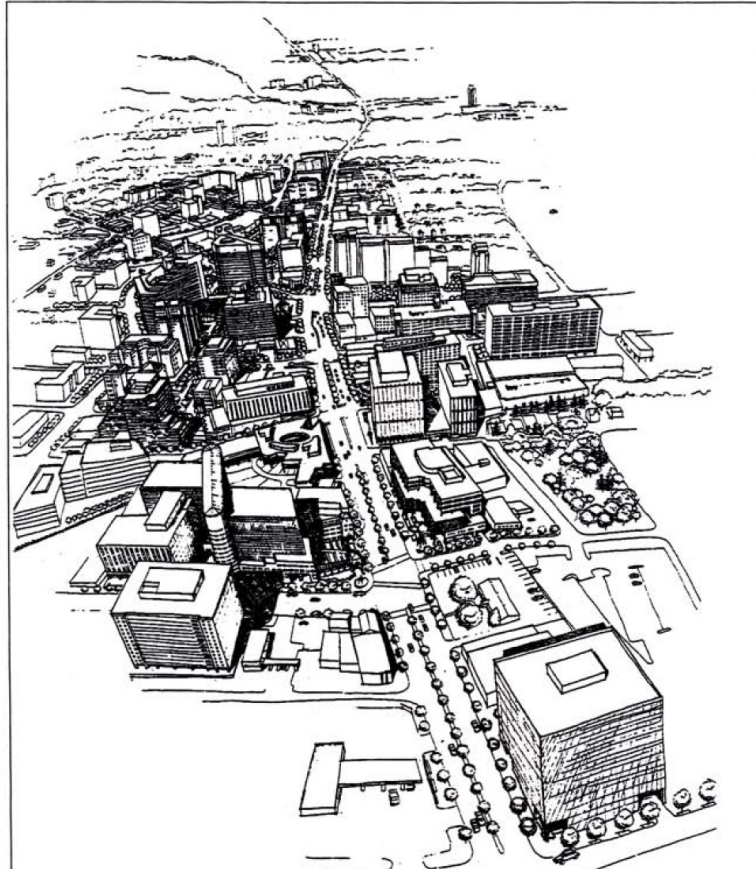
In response to other concerns expressed at the hearing, the Applicant added Binding Element No. 24, prohibiting location of a lay-by along Montgomery Lane. Exhibit 127.

**E. Conformance with the Master Plan**  
**1. 1994 Bethesda CBD Sector Plan**

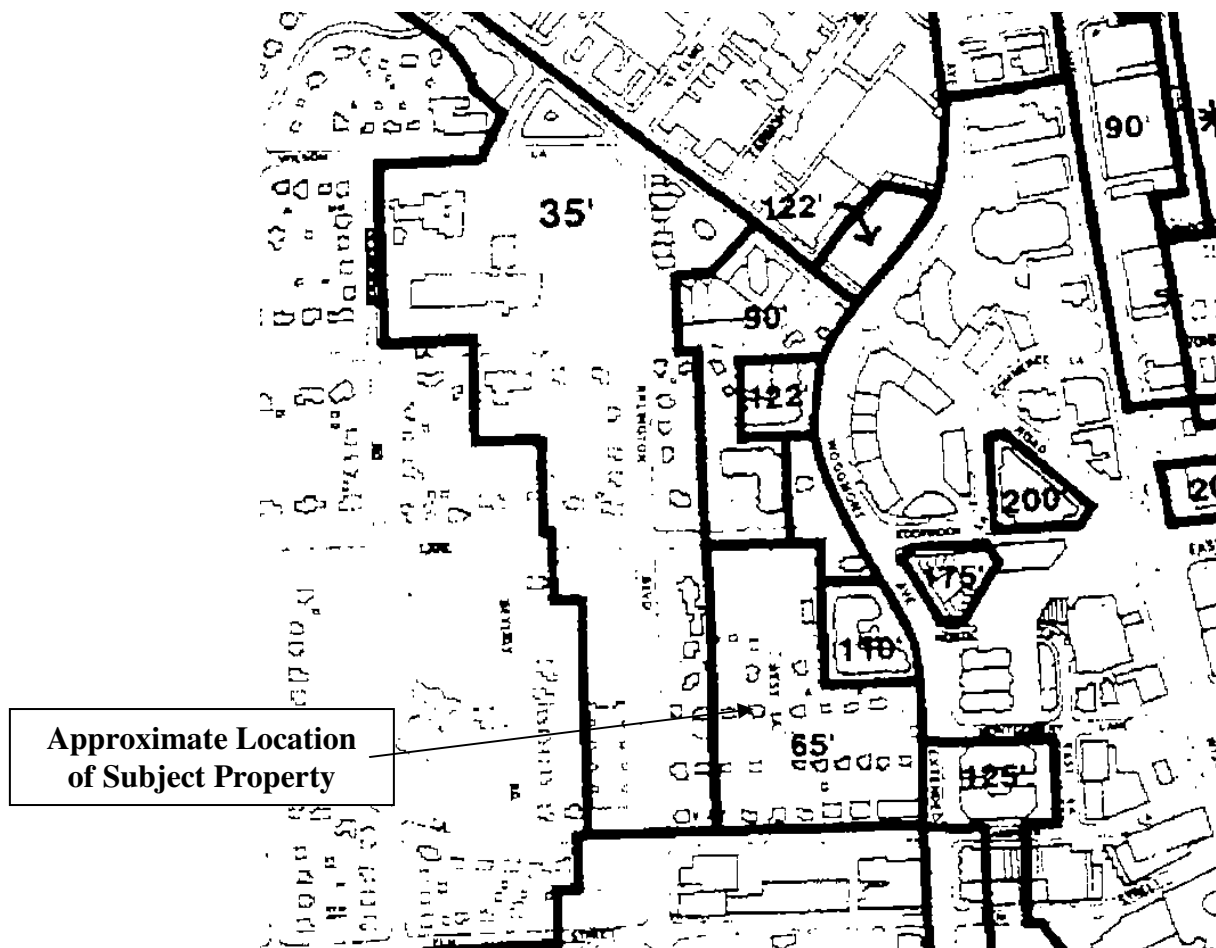
The 1994 Plan envisioned Bethesda as a “regional employment center” and strove to create a “vibrant, urban, mixed-use neighborhood that emphasizes residential, small-scale retail, the arts and public amenities.” *1994 Plan* at 5. The 1994 Plan’s concept called for greater heights at the CBD Core (near the Bethesda Metro Station) stepping down to the edges of the Sector Plan area (some outside the CBD), to “ensure compatible transitions to adjacent neighborhoods...” *Id.*, p. 12. A graphic illustration of this concept (with the Core District in the foreground) is demonstrated in Figure 1.1 (on page 2 of the Plan):

**AERIAL OF DOWNTOWN BETHESDA**

**FIGURE 1.1**



The Plan employed a variety of mechanisms to implement its vision. To achieve the urban form desired, the Plan established height limits for development to maintain the tent-like transition from the Metro Core to the CBD edges. Figure 3.2 (on page 39 of the Plan) includes height limits for the TS-R District, shown on the following page.

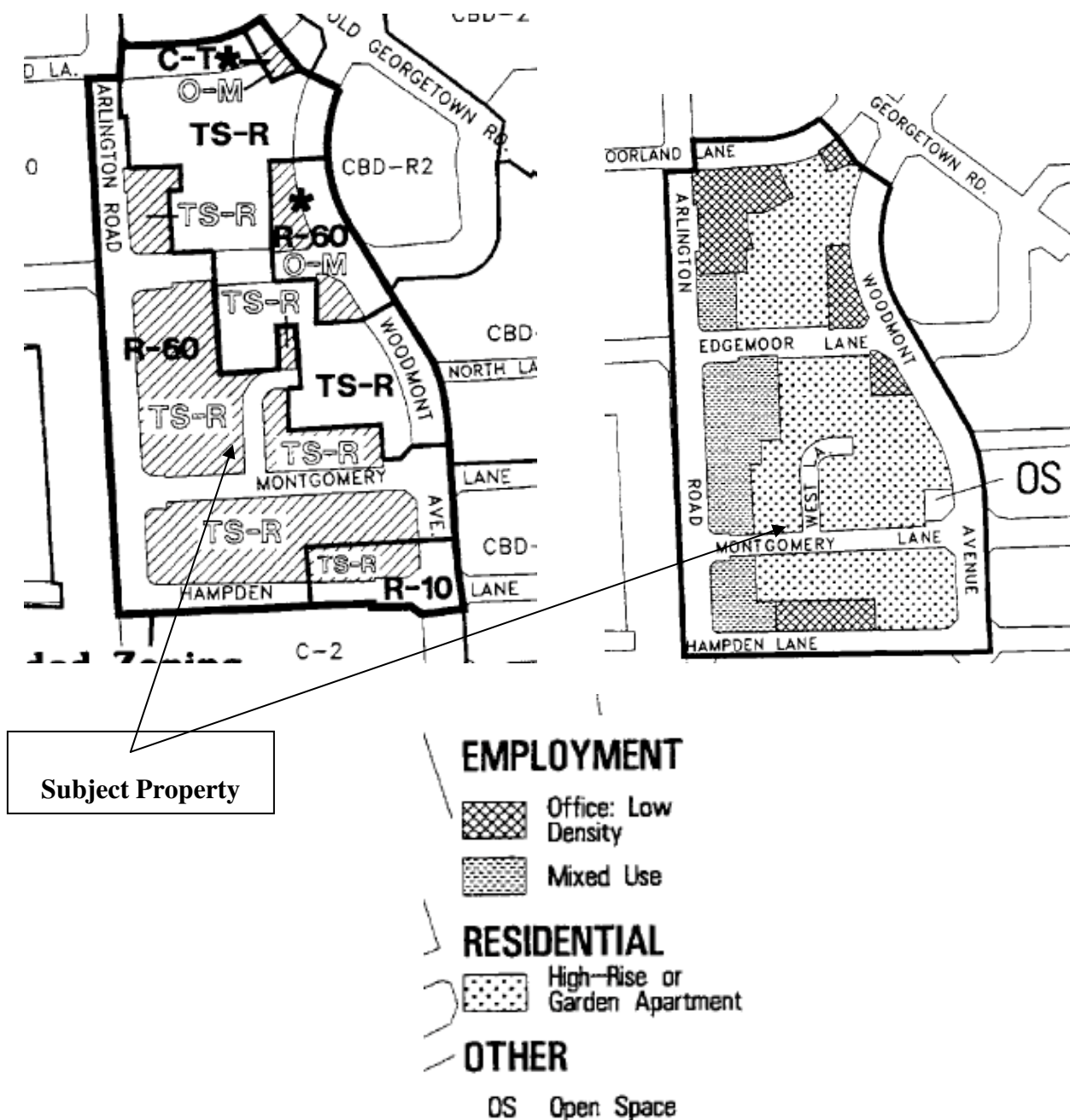


The Plan divided the area into districts, each with its own unique objectives. The subject property is located within the Transit Station Residential District. Exhibit 110, p. 80. The objectives for the district include:

1. Provide incentives for and remove barriers to achieving high-density housing in the TS-R District.
2. Increase flexibility in the TS-R Zone to allow the district to achieve a low-rise, high-density "urban village" pattern.

3. Retain residential scale along Arlington Road. *Id.*

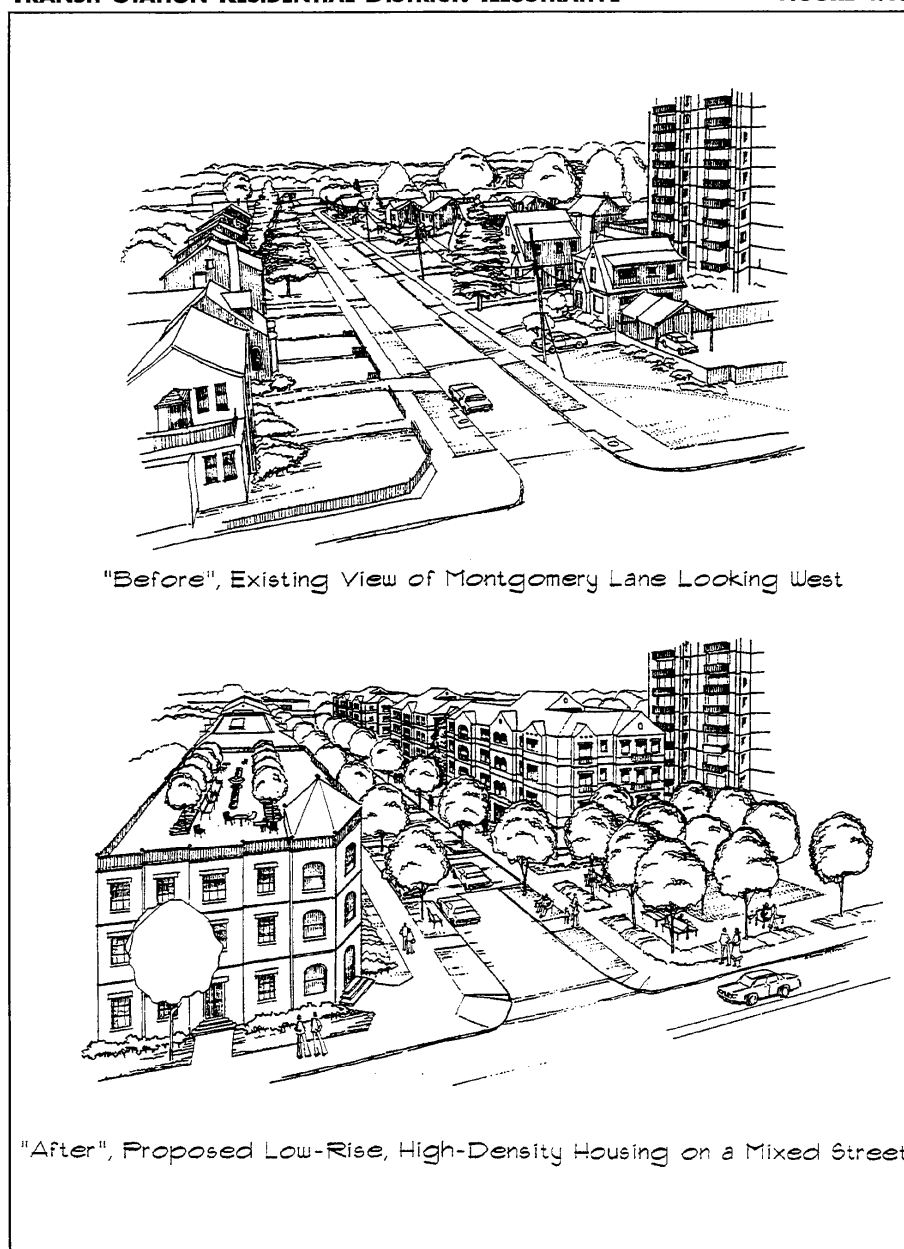
The proposed land use and zoning for the District is included in Figure 4.13 from the Plan (Exhibit 111, p. 81), shown on the following page.



The Plan characterized the achievement of high-density housing as “an important objective” for this District. *Id.* It recommended only limited commercial and retail uses. The



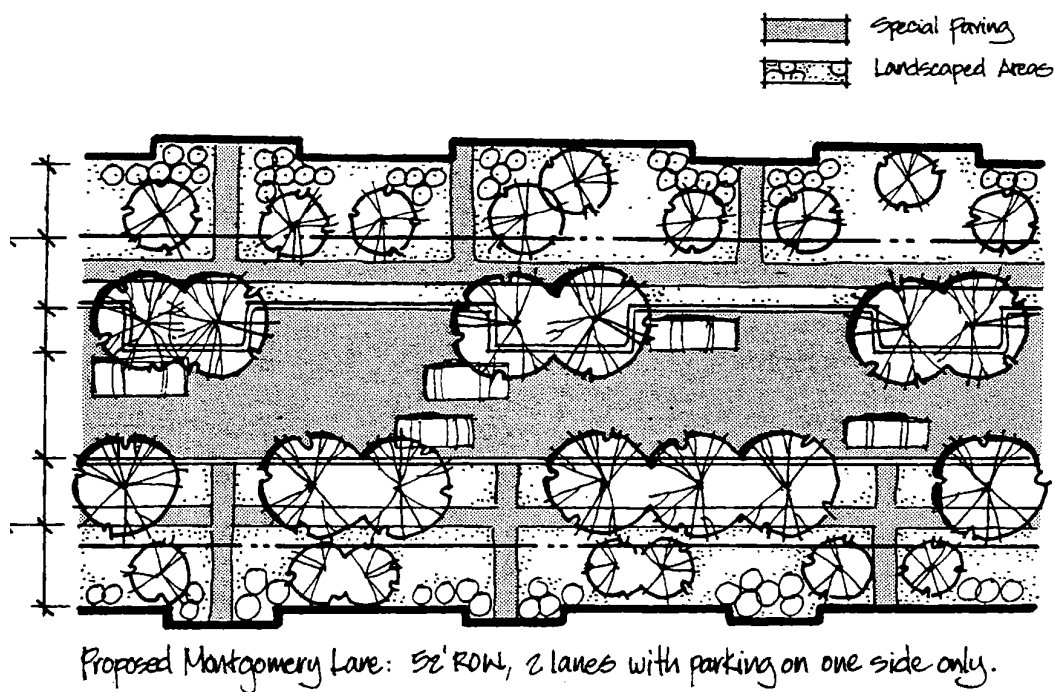
Plan envisioned a “low-rise, high-density urban village” and recommended changes to the TS-R Zone to make concept more feasible. Changes recommended included (1) reducing the required amount of green space permit buildings to fill out a sight, and (2) to reduce heights in order to lower construction costs. The Plan recommended that the buildings appear like townhouses, but actually be three to six story multi-family buildings. *Id.* at 82. It illustrates its “high-density, low-rise” concept as follows (Exhibit 111, p. 84):

**TRANSIT STATION RESIDENTIAL DISTRICT: ILLUSTRATIVE****FIGURE 4.15**

To achieve the high density desired, the Plan recommends a *minimum* density of 45 dwelling units per acre except for developments along Arlington Road. The Plan states:

The Plan anticipates that some projects will incorporate higher densities, and the full 2.5 FAR density (about 100 dwelling units per acre) would be allowed. *Id.* at 82.

The Plan recommended the closed block configuration to create more usable open space and identified building frontage along Montgomery Lane as a resource for publically oriented open space. Montgomery Lane was designated a “mixed street” with curb-side parking and special pavers. *Id.* The Plan recommended that Montgomery Lane have a paving width of only 20 feet within a 52-foot right of way. The goal of the mixed street designation was to provide pleasant pedestrian linkages between the public library and park on Arlington Road and the a proposed urban green space along Woodmont Avenue. *Id.* The concept for the Montgomery Lane is shown in Figure 5.12 of the Plan:



The Plan included seven urban design guidelines for the TS-R District. These are listed below (*Id.* at 85):

1. Permit projects with a minimum lot size of 18000 square feet to encourage smaller-scale projects. Projects should not leave isolated parcels.
2. Encourage low-rise buildings to fill out the parcel.
3. Maintain low-rise building heights which step down to three floors along Arlington Road. Heights of up to six floors are preferred near Woodmont Avenue to achieve the desired urban form.
4. Provide 25-foot building setbacks from the curb (15 feet from the Sector Plan right-of-way) along Arlington Road. Setbacks in the remaining portion of the TS-R District will be decided on a case-by-case basis as redevelopment proceeds through the Planning Board approval process.
5. Design roof tops to achieve a residential impact by using hip roofs, gables, turrets, and other types of pitched roof lines. The varied roof line is desirable to improve character and reduce the sense of bulk.
6. Locate front unit entrances along the street when residences are provided on the first floor to encourage street life.
7. Locate required parking either underground or in rear decks, so as not to be seen from surrounding streets.

The Transportation chapter of the Plan also identifies Montgomery Lane as an important pedestrian link between the Core and the public library. *Id.* at 151. To encourage walking, the Plan calls for 15-foot wide sidewalks in all areas of Bethesda (except for the Metro Core, where the Plan recommends 20-foot sidewalks). It contained special recommendations for the intersection of Montgomery Lane and Woodmont Avenue and a mid-block crossing on Montgomery Lane to encourage pedestrian flow. *Id.* at 154-155. It also recommended that the one-way westbound restriction (to approximately West Lane) be retained to prevent eastbound traffic through movement from Arlington Road to Woodmont Avenue. The Plan noted, however, that travel ways on one-way streets should accommodate emergency traffic and allow traffic to pass a stopped vehicle. *Id.* at 180.

The Plan's streetscape guidelines contain special recommendations for Mixed Streets, below:

Mixed streets emphasize pedestrian circulation while allowing limited, slow vehicular traffic. These streets should be developed with streetscape elements, including trees, plantings, special paving and furniture. Bollards may be used rather than curbs to emphasize the pedestrian character of the street. Mixed street designs will require interagency review prior to implementation. Currently, Bethesda has only one Mixed Street, a private driveway serving the office development behind CVS Pharmacy on Arlington Road.

## **2. The Applicant's Interpretation**

The Applicant believes that the proposed development conforms to the Sector Plan's recommendations for the TS-R District. The Applicant's expert land planner, Mr. William Landfair, testified that the proposed 3.05 FAR and 70-foot height conforms with the Sector Plan, even though the Plan recommends maximum densities of 2.5 FAR and heights of 65 feet for this portion of the TS-R District. This is because the Zoning Ordinance permits densities to exceed the density and height recommendations of the Sector Plan if the Applicant designates 15% of the units as MPDUs. 4/8/13 T. 26.

Mr. Landfair testified that the proposed development furthers the Plan's goal to achieve high-density housing close to transit. He opined that the densities envisioned by the Plan have not been achieved. The Applicant submitted evidence indicating that current densities are at 46 dwelling units per acre. Exhibit 94, p. 18. According to Mr. Landfair, this average will increase to 66 dwelling units per acre assuming that the maximum number approved are actually developed. The Applicant is able to impact the District-wide density average because of the smaller unit size proposed. 4/8/13 T. 50. In addition, the number of MPDUs within the District will more than double. *Id.*

Mr. Landfair testified that the proposed 70-foot height is consistent with the heights of other buildings in the surrounding area. The Applicant submitted the following exhibit showing

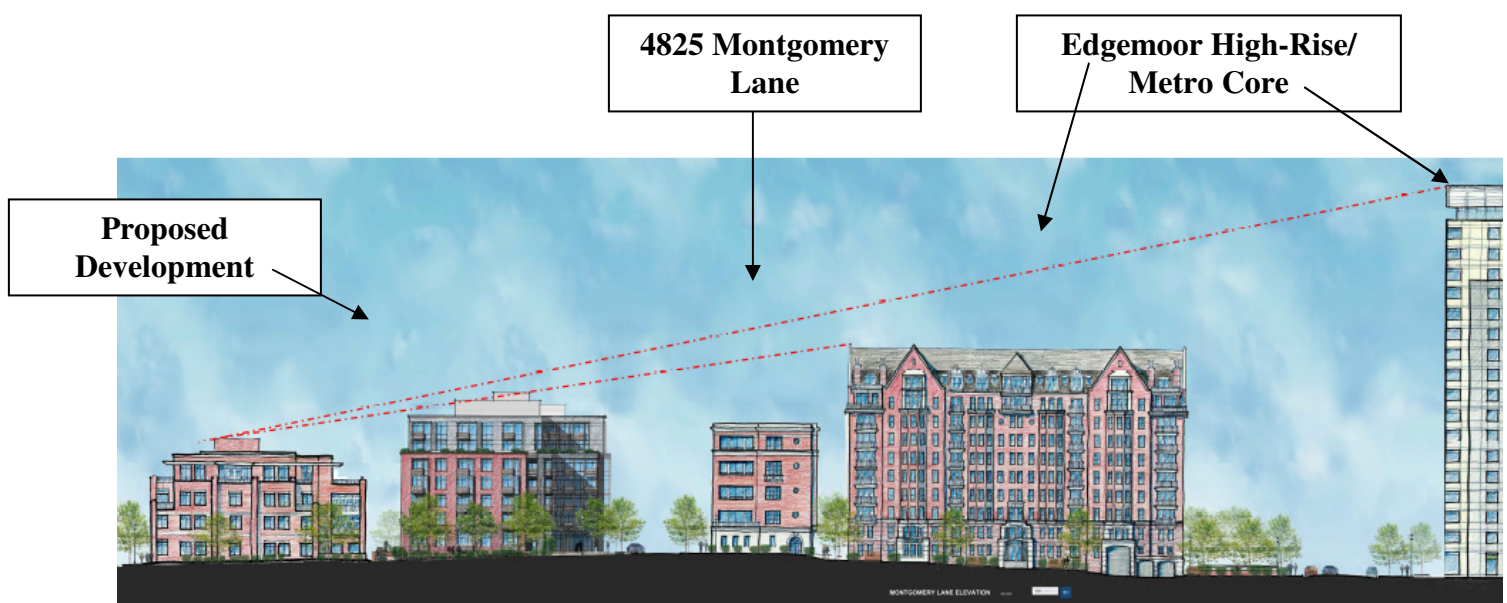
existing (in lighter red) and approved (in dark red) buildings that have exceeded the recommended height limits in the Sector Plan (Exhibit 106(c)):



The Sector Plan recommends heights of 35 feet along Arlington Road scaling up to 65 feet along Woodmont Avenue. The Villages of Bethesda is partially located within the area recommended for 35 foot heights, but was built at a height of 42 feet. South of that, the Edgemoor at Arlington North has been approved at 48 feet, although it is 35 feet high along Arlington Road. The Edgemoor at Arlington, directly south, is also 35 feet high along Arlington Road, but rises to a height of 46 feet. The Hampden Lane project, located in the northeast quadrant of the intersection of Arlington Road and Hampden Lane, has been approved at a height of 71 feet. While this building steps back from Arlington Road, the highest portion of the building is 71 feet. *Id.* at T. 34-35. Part of the 71-foot portion of the building extends into the

area recommended for 35 feet. The 4901 Hampden Lane Building has a building height of 70 feet, which exceeds the 65 feet recommended in the Sector Plan. *Id.* at T. 37

Mr. Landfair opined that the development will fulfill the urban design guidelines of the Sector Plan. The project will concentrate development within the TS-R District. According to him, the development fulfills the Plan's goal to create a compatible transition from the east to the west, with the higher heights near the Metro core scaling to lower heights along Arlington Road. *Id.* at T. 41. This is important to achieve the Plan's goal to maintain compatibility with the single-family homes west of Arlington Road. To demonstrate this, the Applicant submitted an illustrative drawing showing the reduction in heights from east to west (Exhibit 79):



Mr. Landfair believes that incorporating Lot 26 into this development plan also furthers the Sector Plan's goal to avoid isolating single parcels. This also enables the Applicant to provide usable, viable public use space and improve the pedestrian network for the area. *Id.* at T. 42.

In his opinion, the development will meet the Sector Plan's goals because it locates residential density near the Bethesda core, provides affordable housing through MPDUs, and satisfies a market demand for smaller, more affordable units in the area. The density also



conforms with the recommendations of the Sector Plan, and the Applicant feels this will establish an appropriate transition from the Bethesda core to the single-family residential neighborhoods across Arlington Road. *Id.* at T. 54-55.

### **3. The Opposition's Position**

Those opposing the application assert that the development fails to conform to the Sector Plan for several reasons: (1) the height does not meet the limits recommended for development in the TS-R District; (2) the height does not comply with the Sector Plans "tenting concept" for the TS-R District, (3) the density does not conform to the limits recommended by the Sector Plan, and (4) the design does not comply with the "urban form" and design guidelines for the TS-R District and Montgomery Lane in particular.

In support of the first argument, the opposition points out that buildings approved exceeding the Plan's recommended height limits have step backs in the roofs that strictly conform to its height limits. In particular, both the Edgemoor at Arlington North and the Edgemoor at Arlington are 35 feet high along Arlington Road, and step back to 46 and 48 feet in height, respectively. While portions each building's maximum height are within the area designated for 35-foot height limits, each building achieves a transition in accordance with the Sector Plan. Similarly, 4901 Hampden Lane will be 70-feet high along Woodmont Avenue, but will "step down" to 60 feet along Montgomery Lane. The Hampden Lane building similarly steps down from 71 feet to lower heights at Arlington Road. While the proposed development steps back at 50 feet, under the 65-foot limit, those opposing the application believe that the 12-foot depth of the step back is insufficient to mitigate the building's mass.

Several of those who testified believe that the building also violates the "tenting concept" for the TS-R District because the Applicant does not begin the "tent" at the appropriate height or location. Mr. Kenneth Doggett, an expert land planner, testified that the Sector Plan incorporates

two tents: the first is to gradually decrease in height from the Metro Core to the edges of the CBD and the second is to decrease from 65 feet at the corner of Woodmont Avenue and Montgomery Lane to 35 feet at the intersection of Montgomery Lane and Arlington Road. Within the TS-R District, the primary concern is meeting the tenting concept from Woodmont Avenue and Montgomery Lane. The TS-R District's "tent" should not begin with the Edgemoor High-Rise because of the Council's finding that the 100-foot height should not serve as a precedent for the area. Mr. Doggett testified that the building at 4825 Montgomery Lane is five stories and serves as an appropriate transition to the four-story portion of the Holladay Project. As a result, this building fits within both tenting concepts. When asked whether City Homes was the "tail wagging the dog" because it arguably should have been more dense to meet the minimum density of the TS-R District, he stated that other developments along the block have managed to be compatible with both. 4/29/13 T. 68-71.

According to Mr. Doggett and several other individuals, the tenting concept requires that the height of buildings continue downward in a straight line without variation from the tent's beginning point. Ms. Linda Skalet testified that developments on the south side of the street comply with this recommendation. The currently approved design for 4901 begins on Woodmont at 70 feet in height and declines to 60 as it goes down Montgomery Lane. The City Homes Condominiums vary in height from 48 feet to 52 feet at the peak of their roofs. The Edgemoor at Arlington is 48 feet high on its eastern end on Montgomery Lane and declines to 35 feet on Arlington Road. Unlike the south side of the street, this development will not form a continuous line downward. The building at 4825 Montgomery Lane was approved at a height of 65 feet with a 4-foot parapet; this height has been reduced at site plan to 60 feet with a 4-foot parapet. Thus, it will be lower than the proposed development and will deviate from the straight line needed to comply with the tenting concept. 4/29/13 T. 20-23.

Those opposing the application also contend that the proposed development does not conform to the density recommended in the Plan. They argue that the language cited above

stating that some projects will use the “full 2.5 FAR” of “about” 100 dwelling units per acre acts as an absolute cap on density despite the Zoning Ordinance provisions permitting bonus densities for MPDUs. 4/17/13 T. 278.

Many of those testifying against the application felt that the proposed design failed to comply with the urban design guidelines recommended in the Sector Plan. The Plan called for multi-family buildings that appeared to be 3- to 6-story townhouses. Mr. Kenneth Doggett, the opposition’s expert land planner, opined that, with the exception of the Edgemoor high-rise (which was the first building constructed), most have the buildings have consistently been three to six stories. Contrary to the recommendations of the Sector Plan, the proposed development plan calls for seven stories, five at the front end and two stepped back, causing the bulk of the building to intrude upon the street. If the roof top mechanical structures are considered in addition, the bulk is “just too high.” Despite this attempt to mitigate the bulk along the building’s frontage, the use of glass emphasizes the mass and bulk. It is certainly not the type of program that should appear to be townhouses, which in his opinion, is the most important element of the recommendations of the Sector Plan. 4/29/13 T. 37-39.

In his opinion, one of the dominant themes in the Sector Plan is to build three to six stories and add landscaping details to break up the bulk of the buildings. While affordable housing is important, it should not be a justification to “destroy” the Plan, in his opinion. *Id.* The building at 4825 Montgomery Lane is not bulky; it’s only four stories, has residential scale and articulation, which include cornices, four types of residential window go the entire height of the building. The proposed development should not “shoot up” above this building because of its location mid-block. Mr. Doggett stated that he believes a 12 foot set back is inadequate for the proposed height of this building. In his opinion, the step back should be a minimum of 30 feet, although this is not set in stone. His main point is that, while elevators are a very important part of a plan, they should not dictate the design of the project and the step back needs to be greater to be meaningful. 4/29/13 T. 57-59.

Mr. Doggett opined that the Sector Plan tries to produce a “new urban” design on the street, which consists of intimate and open scaled buildings using the type of articulation used in City Homes. This articulation uses defined windows and doors rather than the large scale façade of the proposed building. *Id.* at T. 54-55. Other buildings in the area use gables, bay windows, high-pitched roofs, cornices, balconies and residential scale wall units to meet the guidance given by the Plan. *Id.* at T. 55-56. The point of the Plan is to provide a low-level entry scale to the Bethesda CBD, which is accomplished successfully by City Homes. *Id.* at T. 37-39. Photographs of the City Homes illustrate this (Exhibit 102(d)):







## **F. Compatibility**

The vortex of the controversy in this case swirls around the building's compatibility with existing residential development within the neighborhood, and in particular on Montgomery Lane. The primary disagreement relates to the building's bulk, generating to numerous arguments on whether its scale, density, mass, height, setbacks and architecture are compatible with the neighborhood.

### **1. Height**

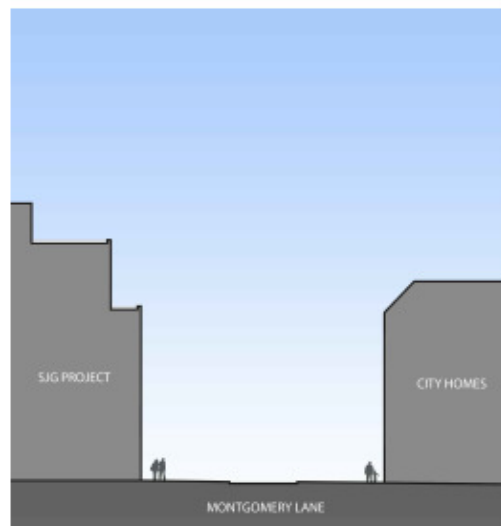
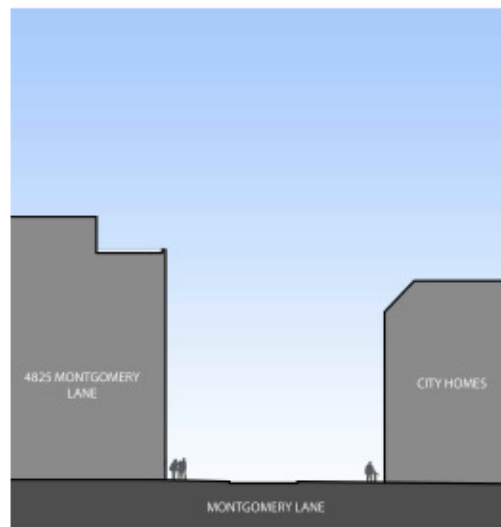
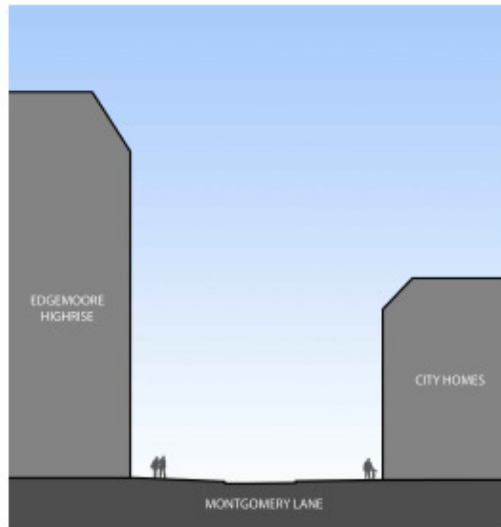
There was some dispute regarding the actual height of the City Homes townhouses used by the Applicant during its case-in-chief. The Applicant initially testified that the City Homes townhouses were 53 feet high. 4/8/13 T. 26-28. Later, it acknowledged that this measurement was to the peak of the roof rather than to the height of the eaves as permitted in the Zoning Ordinance. 4/17/13 T. 110-113. As the Applicant measured all other projects in the area under the definition set forth in the Zoning Ordinance, the Hearing Examiner believes it necessary to

apply the same standard to all projects so that the Council may compare apples to apples. Technical Staff advises that City Homes is 48 feet high under the Zoning Ordinance; this is consistent with that of City Homes' residents. Exhibit 54; 4/17/13 T. 211. The Hearing Examiner so finds.

The Applicant asserts that the height of the proposed project is comparable to other buildings approved in the surrounding area. Proceeding from east to west on the north side of Montgomery Lane, the Edgemoor High-Rise is 100 feet high, 4825 Montgomery Lane received a zoning approval at 65 feet with a 4-foot parapet (although this was reduced to 60 feet with a 4-foot parapet at site plan), the proposed development is 70 feet high, but has a step back at 50 feet, and the Edgemoor at Arlington North was approved at 48 feet high. On the south side, 4901 Hampden Lane was approved with maximum heights of 70 feet, the City Homes height to the peak of the roof is 53 feet, and the Edgemoor at Arlington is 46 feet. The Applicant's expert land planner, Mr. William Landfair, testified that the height was of appropriate scale and created a compatible transition along Montgomery Lane, both in an east-west and a north-south direction. He illustrates his point through perspectives prepared by the Applicant (Exhibits 79, 80), shown below and on the following page:







In Mr. Landfair's opinion, the 70-foot height is appropriate given the distance between the different projects. Mr. Irish testified that a distance of 66 and 67 feet separate the building faces of the City Homes and the Edgemoor High-Rise and 4825 Montgomery Lane, respectively. The building face of the proposed development is 73 feet from the face of City Homes and 85 feet at the step back. As a result, the distance between City Homes and the proposed development is the largest along Montgomery Lane. 4/17/13 T. 56-61.

The Applicant also argues that the full height of the building is needed to provide 15% of the units as MPDUs. The density recommended by the Sector Plan (i.e., 2.5 FAR) yields 97,010 feet of gross floor area. The 22% bonus density increases the FAR to 3.05 (i.e.,  $2.5 \times 1.22$ ), which translates into 118,352 feet of gross floor area. Thus, there is a difference of approximately 21,000 square feet between the FAR recommended by the Sector Plan and the bonus density. 4/15/13 T. 76-77.

They then deducted the area needed to provide setbacks and comply with the requirements of the TS-R Zone to determine the building's footprint. The unconstrained site area consists of approximately 15,800 square feet. If the Applicant achieved the extra density by adding floors, the building height would be approximately 75-76 feet. *Id.* at T. 77-78.

To minimize the height, Mr. Radulescu testified that his firm designed the building to "pack" the bonus density into the existing 15,800 square foot footprint at a height of 70 feet. In part, they accomplished this by reducing the typical standard residential ceiling height from 10'7" from slab to slab to a 9-foot distance between slabs. As a result, the Applicant has compromised the ceiling height to accommodate the bonus density and extra MPDUs. In his opinion, the Applicant is minimizing the additional height necessary to incorporate the bonus density. *Id.* at T. 79.

Nor does the Applicant agree that comparisons of height for the purposes of compatibility should account for ground elevation. The Applicant's expert civil engineer, Mr. Charles Irish, testified that that the Zoning Ordinance does not require this. In his opinion, elevation should not be considered for compatibility reasons because an individual's eye level changes with the elevation. Absent a dramatic change in elevation, such as a cliff, he opined elevation above sea level does not impact the compatibility of the project. *Id.* at T. 62.

As succinctly put by Mr. Louis Pohoryles, those opposing the application feel that the Applicant is trying to "shoehorn" too much density on the site. 4/19/13 T. 269. Ms. Susan Turnbull, a resident of City Homes and former Chair of the Montgomery County Board of Appeals, asserted that ground elevations should be considered when determining the compatibility of the project. Because the building is located at the highest elevation on Montgomery Lane, she believes that the building will dominate the street. Ms. Susan Turnbull presented a chart comparing the ground elevations of different existing and approved projects in the area (Exhibit 101(i)), shown on the following page.

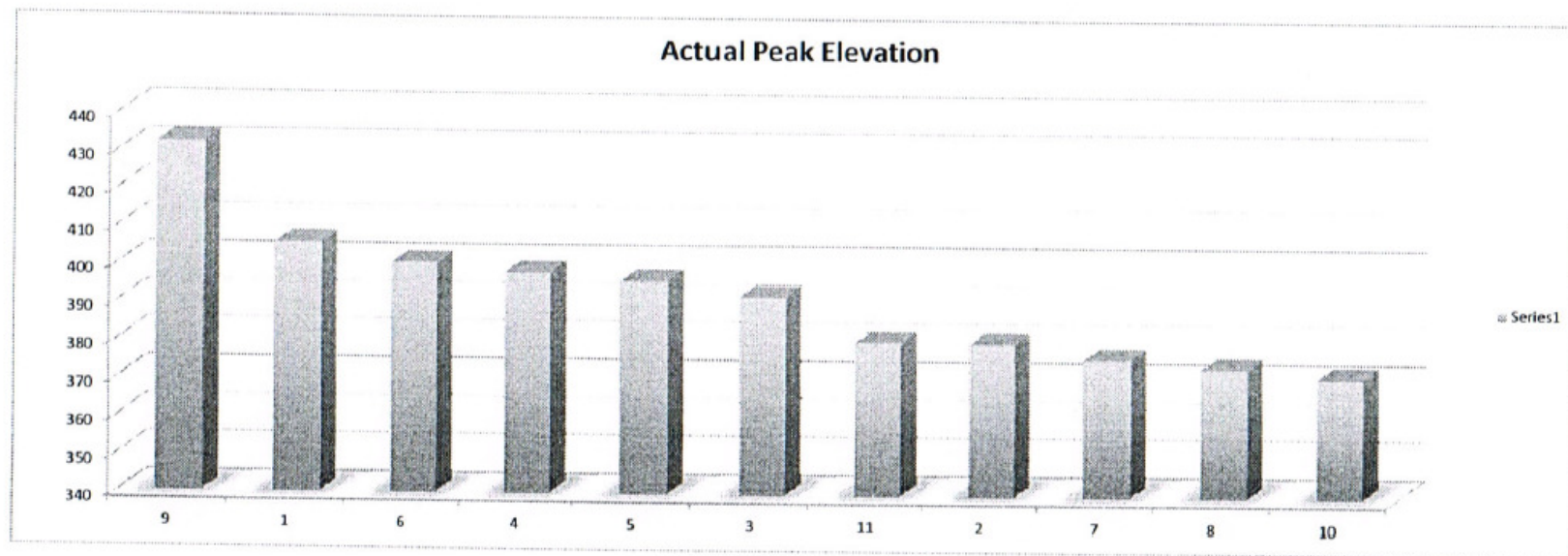
According to Ms. Turnbull, there is a 20-foot difference in elevation between Arlington Road and the highest point on Montgomery Lane and a difference of 8 feet between the measuring point for the proposed development and the Montgomery Lane frontage. As a result, in her opinion, the building will actually be 77.8 rather than 70 feet high. 4/17/13 T. 233. She testified that the combined elevation and height of 4901 Hampden Lane is 9.8 feet lower at its highest point and 19.8 feet lower at the step down along Montgomery Lane. *Id.* at T. 234. Even though both projects are seven stories, the Hampden Lane Building will appear to be a full story lower because of the 12-foot difference in elevation. *Id.* at T. 235.

In her opinion, other buildings in the surrounding area have used more significant step backs to mitigate their height. The measuring point for the Hampden Lane Building was at the

1911

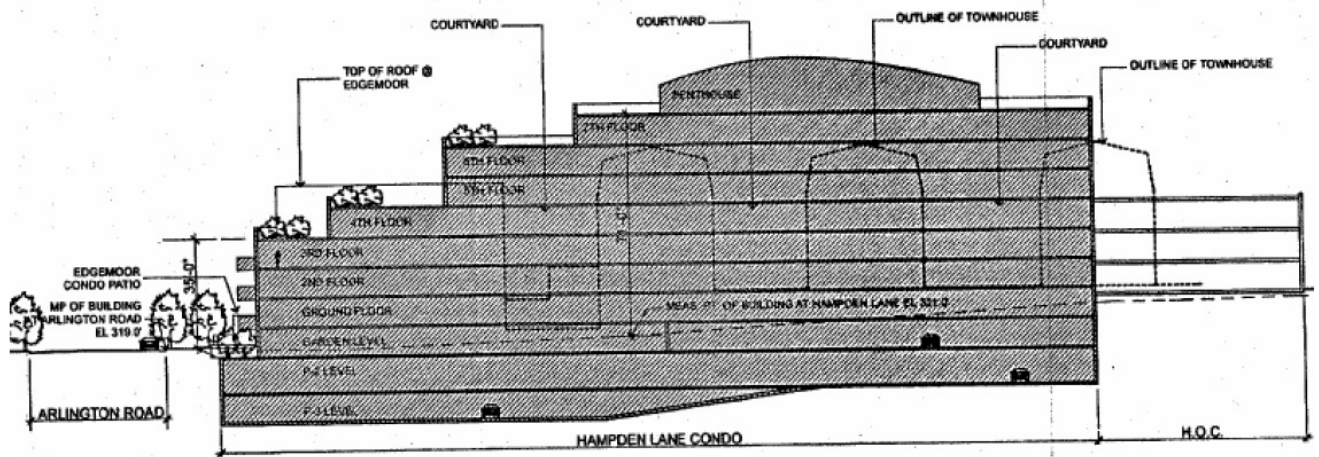
Comparison of Neighboring Properties by Highest to Lowest Elevations

Reference #	9	1	6	4	5	3	11	2	7	8	10
Existing or Proposed Project	Existing Edgemoor	Proposed West Lane - Full Height (Exclusive of Penthouse)	Approved Holladay - 6 story portion	Approved 4825 Montgomery Lane (without Parapet)	Approved 4901 Hampden Lane	Approved 4915 to 4921 Hampden Lane - Full Height	4913 Hampden Lane - DHCA	Existing City Homes of Edgemoor	Approved Holladay at Montgomery 4 story	Approved Edgemoor at Arlington North	Edgemoor at Arlington
Local Map Amendment	G - 763	G - 954	G - 843	G - 908	G - 819	G - 842	G - 842	LMA - 721 & G - 775	G - 843	G - 865	G - 778
Location	NW Corner of Woodmont & Montgomery	NW Corner of West & Montgomery	NW Corner of West & Montgomery	NE Corner of West & Montgomery	SW Corner of Woodmont & Montgomery	NE Corner of Arlington & Hampden	Midblock on Northside of Hampden	Midblock on Southside of Montgomery	NW Corner of West & Montgomery	NE Corner of Arlington & Montgomery	SE Corner of Arlington & Montgomery
Actual Peak Height	432	405.5	400.2	397.9	396	392	380.2	380	376.2	373.8	371.5
Base Elevation	332	335.5	335.2	332.9	326	321	332.2	332.1	335.2	325.8	325.5
Building Height	100	70	65	65	70	71	48	48	41	48	46
# of Stories		7	6	5	7	7	4	4	4	3 + Resid PH	3 + Res PH





center of the building. Testimony at that public hearing indicated that the building did not exceed 68 feet at any point (even though approved at a maximum height of 71 feet) due to multiple step backs. She presented excerpts from the Hearing Examiner's Report and Recommendation for the Hampden Lane Building (LMA G-842) to demonstrate how, in her opinion, the step backs mitigated the height of the Hampden Lane Building (Exhibit 106(h)) below:





Ms. Turnbull also felt that the height negatively impacted the surrounding area because it eliminates several existing views. After the proposed development is built, she will have no views of the sky from any of the main living areas in her home. Currently, she can see about ½ of Lot 26. She testified that 18 out of the 29 townhouses in City Homes would have views obstructed by the proposed development. 4/17/13 T. 209.

Mr. Doggett testified that the area as developed should set the residential character of the street. Given the amount of land occupied by the City Homes townhouses, they play a significant role in this. 4/29/13 T. 66. The location of 4825 Montgomery Lane between the Edgemoor High-Rise and the subject property maintains a residential scale at five stories and appropriately serves as a transition between buildings. In his opinion, the primary tenting concept in the TS-R District is the recommended transition from 65-feet along Woodmont Avenue and 35 feet along Arlington Road. *Id.* at 68.

## **2. Step Backs and Setbacks**

Another bone of contention between the parties is whether the use of step backs, setbacks, and public use space do enough to mitigate the mass of the proposed development in relation to Montgomery Lane.

The Applicant argues that several elements mitigate the mass of the building: (1) the 12-foot “step back” of the roof top after the 5<sup>th</sup> floor, (2) the location of the pocket park, and (3) architectural detailing (this latter element is discussed in the next section). Technical Staff and the Planning Board agreed with the Applicant that these sufficiently retained the building’s residential character. Needless to say, those opposing the application find that these are insufficient to reduce the building’s mass.

Mr. Radulescu testified that several roof elements combine to mitigate the mass of the building as presented to the street. Depending on where an individual is standing on

Montgomery Lane, the top floors may not be visible or may be visible only slightly because of the 12-foot step back. The Applicant submitted an artist's rendering of the view from Montgomery Lane and Arlington Road (Exhibit 72):<sup>7</sup>

**Subject  
Property**



Another view depicts a perspective looking west from the sidewalk in front of 4901 Montgomery Lane and across from the Edgemoor High-Rise (Exhibit 71, shown on the following page).

The Applicant also contends that the location and design of the public use space at the corner of Montgomery and West Lanes not only provides more useable space, but also reduces the bulk of the building. As originally designed, the building's façade along Montgomery Lane

---

<sup>7</sup> The Applicant acknowledged that the rendering may have certain elements (i.e., trees and geese) that do not actually exist.

**Subject Property****Exhibit 71**

extended to 120 feet in length. The scallop reduces the frontage to 78 feet, thus narrowing the bulk of the building along Montgomery Lane.

Mr. Landfair and Mr. Irish testified that the building's setback from the sidewalk is consistent with other developments on the street. At the public hearing, Mr. Irish marked the distances separating elements of the streetscape (Exhibit 112, shown on the following page). According to Mr. Irish, the streetscape along Montgomery Lane consists of several elements: a planting area located between the curb and the sidewalk which will contain street trees, a sidewalk, and the building setback measured from the closest edge of the sidewalk. The planting area in front of the Edgemoor High-Rise and 4825 Montgomery Lane is 7 feet wide and the sidewalk (measured from the edge of the planting area) is consistently six feet wide, although the High-Rise has no planting area where the lay-bys are located. The building setback of the High-Rise is between 10 and 12 feet in width. This may feel smaller because steps leading to the

building's entrance extend into the setback area by 1-2 feet and an ADA accessible ramp extends into the setback area by approximately 4-5 feet. The Montgomery Lane frontage of the High-Rise may also feel "tight" to a pedestrian because of the building's size—it extends 172 feet along Montgomery Lane and its height is measured to a mansard, which in his opinion, adds approximately 10 feet visually.

The 4825 Montgomery Lane building is 46-feet wide. He testified that, while the building's façade has some undulations, it is setback approximately 6 feet from the sidewalk.

The streetscape in front of the subject property will, in his opinion, probably continue the six-foot wide sidewalk. The proposed building will be setback from the sidewalk by at least 12 feet at the narrowest point and for an additional 28 feet at the furthest edge of the scallop.

The southern side of the street also has a six-foot wide sidewalk and a 9-foot wide plant area continuously along the street. The Montgomery Lane frontage for 4901 Hampden Lane extends approximately 76 feet along the street, but is setback only 3 feet from the sidewalk. The City Homes townhouses are setback from the sidewalk by approximately 10-12 feet. One-story steps leading to an entrance are located in the setback area on the end units, which in his opinion is a "major structure." 4/17/13 T. 26. These steps extend to within approximately 1 foot of the sidewalk, which then adjoins the 9-foot plant area. The stairways on the westernmost end units are approximately 5 feet wide, leaving only about 5 feet for plant area.

Mr. Irish pointed out that the building setback on the subject property is greater than many of the approved and existing developments on the street. Unlike the steps at the High-Rise and City Homes, steps leading to the entrance of the proposed development will be incorporated as part of a seating area in the public use space and will read more as public space. 4/17/13 T. 13-70.





Mr. Landfair opined that having a consistent building line along the street is an important part of creating a pedestrian-friendly environment. These edges are used to achieve an attractive and interesting pedestrian environment; it has become so important that planners will use a wall or colonnades to create a continuous street line even when there are no buildings. This trend is being recognized in several new zones, such as the CR Zone, that have recently been adopted by the County. In the latter zones, public use space has been reduced to eliminate “dead” areas that may exist in front of buildings. 4/8/13 T. 38-39.

Mr. Landfair opined that the streetscape provided meets the Mixed-Street concept in the Sector Plan. At the proposed development’s location on Montgomery Lane, the project will have 26 feet of streetscape on the north side and 27 feet of streetscape on the southern side for a total of 53 feet of pedestrian environment. This is more than double the amount of paved roadway (i.e., 21 feet), thus meeting the 50/50 breakdown for a Mixed Street.

Those opposing the application would like the building to be setback 15 feet from the sidewalk to mitigate its bulk. Ms. Turnbull believes this additional setback is important to residents of City Homes because they have the most direct view of the project. Mr. John Weintraub, a resident of the Edgemoor High-Rise, testified that additional space along Montgomery Lane improved the public use space and pedestrian compatibility for the project and felt that a 15-foot setback along the northern edge of the property was an ineffective use of space. 4/29/13 T. 229.

Mr. Doggett testified that the 12-foot step back beginning with the 5<sup>th</sup> floor was insufficient to mitigate the building’s mass and recommended that it be extended to a minimum of 30 feet. He acknowledged the importance of elevators to a residential building, he did not think they should dictate the design of the project. *Id.* at 56-59.



In his opinion, the scallop was a “commendable beginning” to reduce the bulk of the building, but the use of glass only emphasized the mass. *Id.* at 39. Nor did Mr. Doggett agree that maintaining strictly a straight line of building edge was necessary when the architecture varied along the street. According to him, certain architectural styles, such as the Federal or Regency styles, call for straight edges to keep continuity along the street. In his opinion, none of the buildings along Montgomery Lane are in either style; he considers the Edgemoor High-Rise Edwardian in style. The breaks in between each townhouse row of City Homes illustrate this; the landscaped courtyards provide variety on the street. He opined that the private space behind the building could be put to better use as an additional setback along Montgomery Lane. In his opinion, a more effective step back would occur around all three sides of the building, similar to that used in the Edgemoor at Arlington. *Id.* at 48-50.

### **3. Architecture**

Mr. Radulescu opined that the proposed development is compatible with the architecture and building materials used in the surrounding area. He opined that the proposed development is a contemporary interpretation of a classical style. According to him, the buildings along Montgomery Lane are generally in the classical style. They mirrored this in the subject project by providing a strong middle and separate top. The building also has French balconies, and the scallop creating the pocket park to mitigate the building’s mass and create a residential character. The balconies read as bays to represent a typical residential building. The design also has a rustication of the base consisting of a brick workout element, which sets the bricks in and out to create differences in texture. 4/15/13 T. 69-70.

In his opinion, the building’s step back in height at 50 feet and its maximum height of 70 feet blend with both the north-south transition from the Edgemoor high-rise and the east-west transition with the City Homes. The area above the step back is lighter in color in order to

dissipate the height. No other building within the area recommended by the Sector Plan for the 65-foot height has a setback. *Id.* at T. 70-72.

He opined that architectural styles in the area are varied and none of the architecture is true to a particular style. The Edgemoor high-rise is best described as “neo-Georgian.” City Homes is reminiscent of the federal style. He did not associate 4825 Montgomery Lane with any particular style. *Id.* at T. 64. He opined that development in the surrounding area includes a variety of styles, illustrated in an exhibit submitted by the Applicant (Exhibit 81):



Mr. Radulescu opined that the building would be compatible with the surrounding area. One of the elements of compatibility is scale and texture. The surrounding area is relatively traditional. As a result, the building design interprets classical architecture in a contemporary manner. This allows the building to be designed for the present and supports certain

technologies and market conditions. The building, in his opinion, incorporates traditional elements contained in development within the surrounding area: a strong base, a middle, and a top. The base will have a rustication of red brick that is clearly residential in nature, as with the other buildings. Residential elements include punch windows and French balconies that read as bay windows. The top of the building then sits back from the base. In addition, the scallop that creates the pocket park is a totally unique, identifiable architectural element. *Id* at T. 80-81.

The revised development plan further mitigates the building's mass because it incorporates the scallop, which rises from ground level for the full height of the building. Framed by glass windows, it narrows the length of the building's façade along Montgomery Lane from 120 feet to 78 feet and reduces the façade along West Lane as well. The roof top step back begins at approximately 50 feet, equivalent to the height of the confronting City Homes.

The prior building setback combined with an additional 615 square feet of the scallop totals approximately 1,000 square feet. While not finally designed, the Applicant believes it can combine both hardscape and landscape features to create a "pocket park" for use by pedestrians along Montgomery Lane and by residents of the building. Mr. Radulescu opined that the Montgomery Lane façade has sufficient architectural reading to be compatible with the surrounding buildings. 5/13/13 T. 34.

Mr. Doggett testified that the Sector Plan strives to achieve a "new urban" design for the street. This consists of intimate and open-scaled buildings using the type of articulation seen in City Homes. This articulation includes defined windows and doors rather than the large scale façade of the proposed building. Other buildings in the area mirror this articulation, using gables, bay windows, high-pitched roofs, cornices, and balconies to create a residential character, illustrated by the pictures included on pages 46 and 47 of this Report. 4/29/13 T. 50-56. The new urbanism adopted by the Sector Plan has as dominant themes the use of 3-6 story buildings

with landscaping details to break up the bulk. *Id.* at 56. He opined that the main problem with the building was its bulk; it does not provide a “human scale” to the District. While affordable housing is an important goal, in his opinion it should not be used to “destroy” the design of the Plan. *Id.* at 57. According to Mr. Doggett, 4825 Montgomery Lane is not bulky; it is only four stories, has residential scale and articulation, including cornices and four types of residential windows that go up the entire height of the buildings. *Id.* at 58-59.

Ms. Linda Skalet, a resident of the Edgemoor High-Rise who has a Ph.D. in Art History and has taught courses on architectural history, argues that the architecture of the proposed development is incompatible with the surrounding area. In her opinion, the Applicant wants to put a massive 70-foot high building without residential detailing between two smaller projects—4825 Montgomery Lane and the Edgemoor at Arlington North. 4/19/22 T. 22. The architecture of this project is reminiscent of the original design for 4901 Hampden Lane that was rejected by the District Council. In her opinion, the original design called for a 100-foot high, minimalist glass tower. After denial of that design, in 2006, the developer redesigned with much more articulation such as projecting bays, setbacks and balconies, and very little glass. In addition, the re-design of the project included a step down in height from 70 feet along Woodmont Avenue to 60 feet along Montgomery Lane. The project was re-designed again in 2012 in a manner very similar to the 2006 design. In her opinion, the 2012 approval represents a “reconfirmation” of the Sector Plan’s recommendation that building heights along Montgomery Lane should begin at six stories and decline to three stories. *Id.* at T. 17-20. She submitted an exhibit (Exhibit 120) illustrating the differences between the original and ultimate designs, shown on the following pages.

In her opinion, provision of MPDUs should not justify incompatible development. She does not believe the Council intends this, as it recently approved a reduction in the number of



units, with a concomitant reduction in MPDUs, proposed in the 4901 Hampden Lane project. Many of the approved buildings along Montgomery Lane have used step backs to create a compatible transition, including 4901 Hampden Lane, the Edgemoor at Arlington and the



**2006 Proposed Design for 4901  
Hampden Lane  
Exhibit 120(a)**

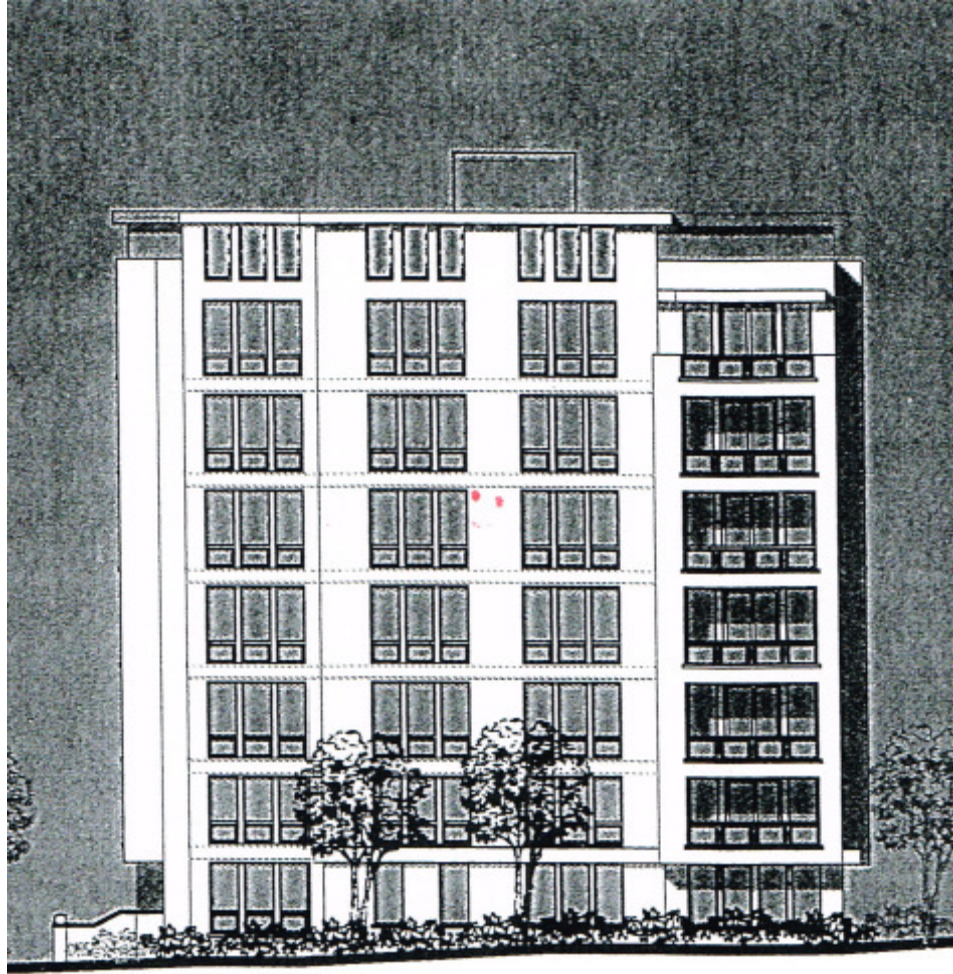


**2006 Revisions to 4901 Hampden Lane  
Exhibit 120(b)**



**2012 Approved Redesign  
of 4901 Hampden Lane  
Exhibit 120(c)**





**2012 Montgomery Lane Elevation of  
4901 Hampden Lane  
Exhibit 120(c)**

Edgemoor at Arlington North. She believes that it is important to consider that the Edgemoor High-Rise was approved only with the proviso that its height not set a precedent for the street.

**G. Public Facilities (Transportation, School Capacity and Water & Sewer Service)**

The County's Growth Policy and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. The applicant provided testimony and exhibits with regard to transportation, schools, water and sewer service and other utilities.

1. LATR/PAMR Review: Mr. Chris Kabatt, the Applicant's expert transportation engineer, testified that the development would satisfy both Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR) or Policy Area Mobility Review (PAMR). Mr. Kabatt explained the general circulation in the area. To get to the property from Woodmont Avenue, one may either proceed further down Woodmont Avenue to Hampden Lane, or could turn right on Montgomery Lane and turn right onto West Lane and then out to Arlington Road. Coming from the south, one would use Arlington Road to reach Montgomery Lane. He believed that the purpose of having Montgomery Lane be eastbound only from Woodmont Avenue was to improve the pedestrian environment in that area. 4/15/13 T. 233.

According to Mr. Kabatt, the existing uses on the property generate 16 a.m. peak hour trips and 11 p.m. peak hour trips. Assuming the maximum proposed density of 120 units, the project will add 20 trips and 25 trips in the a.m. and p.m. peak hours, respectively. Combined with the existing trips, the site generates 36 trips in both peak hours. He noted that trip generation is based on the number of units rather than the number of parking spaces. Although this project has 72 more units than the Holladay Project, it has only 38 more parking spaces. The Bethesda CBD trip generation rates assume that not all parked vehicles will leave or return to the West Lane site during the same peak hour. *Id.* at T. 236. In his opinion, the development's traffic impact will be less than reflected in the traffic study because of the lower ratio of parking spaces to dwelling unit. *Id.* at T. 236-237.

An acceptable Critical Lane Volume (CLV) for the Bethesda CBD is 1800 CLV. He evaluated three intersections for the traffic study: (1) Woodmont Avenue and Montgomery Lane, (2) Montgomery Lane and West Lane, and (3) Montgomery Lane and Arlington Road. All intersections operated at acceptable levels. *Id.* at T. 238. He opined that all three intersections studied operated well below the maximum congestion levels for the area. Based on the CLV, the

Montgomery Lane/Arlington Road intersection operates at 27 and 42 percent capacity during the a.m. and p.m. peak hours.

Mr. Kabatt also testified that the project met the Policy Area Mobility Review (PAMR) requirements as well because the number of trips would have been fully mitigated in both the morning and evening peak hours. This project will probably be subject to the new Transportation Policy Area Review (TPAR) test. Because this property is located within the Central Business District, it will not be required to pay any impact tax. *Id.* at T. 238-239.

## **2. Circulation, Parking and Access**

One of the most highly contested issues is whether the proposed development will exacerbate existing congestion on Montgomery Lane and whether parking is sufficient to serve the development.

Mr. Kabatt testified he also studied the operation of the intersection at Montgomery Lane/Arlington Road and Montgomery Lane itself. He evaluated peak hour levels of service and delays at the Arlington Road/Montgomery Lane intersection and along Montgomery Lane using the Highway Capacity Manual (HCM) methodology because it evaluates vehicle cues and delays. The HCM method revealed that the intersection and approach operate at acceptable levels during both peak hours; the Montgomery Lane approach currently operates at only two to thirteen percent capacity. The HCM methodology revealed vehicle queues of 22-50 feet, which equates to one to two vehicles. All vehicles are able to turn left and right onto Arlington Road during one signal cycle. *Id.* at T. 238-240.

He testified that County's Master Plan of Highways classifies Montgomery Lane as a "business street." The Sector Plan classifies it as a "mixed street." A "mixed street" is defined as one with limited capacity. Montgomery Lane is approximately 20 feet wide with on-street parking on the one-way segment. Currently, capacity on Montgomery Lane approaching

Woodmont Avenue is only 2 to 13 percent. He opined that the street is operating at a limited capacity based on these numbers. Based on his physical observations of the area and the quantitative results of the traffic study, he opined that the photographs displayed on Exhibit 87 accurately represent existing conditions. *Id.* at T. 240-242. According to Mr. Kabatt, he observed vehicles parked outside of designated areas, particularly on the one-way section on the south side of Montgomery Lane. Their field observations of vehicle queues conformed to their HCM analysis of one to two vehicles during the peak hours. His firm projected future vehicle queues to increase to 37 and 57 feet when pipeline development and the proposed development are factored in. This results in essentially the same length as the existing queue. He opined that Montgomery Lane does not experience the same queuing delays as other CBD intersections because of its limited capacity. According to him, the project will have an imperceptible impact on traffic circulation. *Id.* at T. 244-246.

Mr. Kabatt testified that future access will be an improvement over the access to existing uses. Currently, there are four curb cuts for each of the four separate structures. One is located on Montgomery Lane and 3 are on West Lane. The four existing driveways will be consolidated into one driveway on the northern end of West Lane that will provide access to the underground garage. The Applicant proposes to have an at-grade loading bay immediately south of the garage entrance, which will be used by service vehicles and delivery vans. A service corridor connects the service space to the front lobby. Most importantly, the curb cut on Montgomery Lane will be eliminated. Mr. Kabatt testified that it is common to have a service corridor connect the loading area with the lobby because many owners of residential buildings like to have the service entrance and the lobby separated. *Id.* at T. 247.

Mr. Kabatt opined that vehicular access will be safe, efficient, and adequate. The dedication on West Lane will result in 50 feet of right-of-way with a 22-foot section of paving.

According to him, that width is more than adequate to handle the projected traffic. Location of the driveway on the northernmost end of the building separates vehicles from pedestrian traffic because the lobby entrance is at the corner of Montgomery and West Lanes. Montgomery Lane in general will continue to operate well within the congestion standards. In addition, one of the two curb cuts along West Lane will be dedicated solely to a loading and service bay, removing them from Montgomery Lane. He opined that this will prevent the type of congestion created by service vehicles at the adjacent building. *Id.* at T. 248-249.

In his opinion, the 120 parking spaces will be more than sufficient regardless of whether the project is rental or condominium units. He anticipates that most of the MPDU owners will not have cars, freeing up approximately nine spaces for visitors. In response to a question from the Hearing Examiner, he explained that parking is required at a ratio of one space per dwelling unit and ½ space for every MPDU unit. *Id.* at T. 248-249. U.S. Census data for the tract surrounding the subject property indicates that approximately 36% of renters have no vehicles. This percentage means that a minimum of 43 units will not have cars if the project is rental. That number does not include the 18 MPDUs. In addition, there are numerous public parking garages within walking distance of the property available for use by residents and visitors. *Id.* at T. 248-250.

He also testified that the number of loading spaces exceeds the minimum number required by the County's DOT. When the project team met with DOT in the spring of 2012, DOT determined that only one loading space would be sufficient. The addition of two more only improves the situation. *Id.* at T. 250.

Mr. Kabatt described how deliveries will be made to residents. The at-grade loading bay has a door to an interior service corridor which will be required for deliveries and moves. Delivery people could be advised of the procedure using signs—if they attempt delivery through

the lobby and are turned away, he does not believe they will attempt it again. Based on his observations in the area, the FedEx truck takes approximately 5 minutes to make deliveries, so the lay-by would not be occupied for extended periods. Both DOT and Technical Staff have determined that the project will not severely degrade the pedestrian and vehicular environment. *Id.* at T. 252-254.

Mr. Kabatt pointed out that if parking had not been permitted on the south side of Montgomery Lane, as recommended by the Sector Plan, the other developments would not experience the congestion stemming from deliveries to those buildings. He did not know why DOT had approved parking at their location. He testified that, even though Montgomery Lane is only 20 feet wide, cars travel at unusually low speeds, approximately 5-10 miles per hour. In his opinion, the 11-foot lane width along West Lane is more than adequate to permit traffic to circulate. *Id.* at T. 255-257.

Mr. Charles Irish, Jr., the Applicant's expert civil engineer, bolstered Mr. Kabatt's testimony by introducing sweeps of truck turning movements. Exhibit 88. According to Mr. Irish, moving vehicles have three loading options. U-Haul has trucks that are 8'7" in height that may accommodate move-ins for the anticipated size of these units. These vehicles could use either the lay-by on West Lane and (if they add another inch of height to the garage entrance) may use the garage to unload as well. They would also be able to use the loading bay along West Lane. Mr. Irish presented sweeps of the anticipated turning movements (Exhibit 88). An SU-30 box truck is a standard AASHTO vehicle typically used for larger deliveries, which is typically 30 feet long. The SU-30 is much larger than any of the units will need, but the sweeps demonstrate that it could be accommodated on the site. It would be able to pull-up into the hammerhead driveway and back into the loading bay on West Lane or back into the garage



entrance and turn to go into the lay-by. That truck would not be able to use the loading space within the garage because of its height. 4/16/13 T. 237.

Mr. Irish also presented sweeps for a WB-40 truck, which is a tractor trailer. He does not anticipate that this will be used for moves to and from this project, but showed how one could turn around if pulling into West Lane. Like the SU-30 truck, the tractor trailer could pull into the hammerhead, back slightly into the garage entrance, and then pull out and go into the driveway. *Id.* at T. 238. Mr. Irish testified that typical Fedex and UPS trucks are smaller than a SU-30 truck. His firm measured a Fedex truck and a UPS truck delivering to their office. The Fedex truck was eight feet wide, 23 feet long and nine inches long, and 8 inches high. The UPS truck was seven feet, nine inches wide, 25 feet long and 10 feet, 1 inch high. *Id.* at T. 239-240.

Mr. Irish explained that both these trucks could load at the building because each has fewer sweeps than the SU-30 and the height of the loading bay along West Lane is 10 feet. They are considering adding an inch to the height there to accommodate the UPS truck. He was not sure whether a UPS or Fedex-sized truck would have to make the double movement to come out, but it can certainly make the three point turn to pull out and stop at the lay-by. *Id.* at T. 241.

Despite this testimony, those in opposition remain skeptical that the proposed development will not exacerbate existing circulation problems on West Lane. Mr. Louis Pohoryles, a representative of the Edgemoor Condominium Association (i.e., the Edgemoor High-Rise), described existing conditions on the street. According to him, Mr. Pohoryles described Montgomery Lane as a narrow, walkable street. He stated there are only five legal parking spaces along Montgomery Lane today, and each of those five spaces has 2-hour restrictions on it. Mr. Pohoryles testified that there is a lot of illegal parking and stopping on Montgomery Lane. Part of the reason for the illegal parking is that the Edgemoor High-Rise's 54 units, City Homes' 25 units and 4825 Montgomery Lane's four units all have or will have

individual HVAC systems, and each unit owner will have individual responsibility for interior, electrical and plumbing and light, in addition to the numerous common systems in the buildings. The result is to have numerous different service providers visiting the street. Additionally, Mr. Pohoryles stated that landscapers come frequently to all of the properties along the block, generally with trucks and trailers for equipment. Throughout the day, Mr. Pohoryles testified there are postal trucks, movers, delivery services for pizza and food, packages, flowers, upholsterers, drycleaners and installers of home improvements that are constantly parking on the street. He stated the only other parking reasonably available to service buildings on Montgomery Lane is the large garage adjacent to the Bethesda Metro, which is generally crowded during business hours, and is difficult to find parking there. The only other public parking is at the library and that is by law restricted to library patrons. *Id.* at T. 270-272.

He submitted pictures (Exhibit 102(g)) to illustrate these conditions, samples of which are shown below and on the following page:



**View of Edgemoor on Left Looking East  
Toward Metro Core  
Exhibit 102(g)**

**View of Montgomery Lane in Front of  
Edgemoor  
Exhibit 102(g)**



**Delivery Vehicles in Front of Edgemoor High-Rise  
Exhibit 102(g)**

Mr. Andrew Niebler supported Mr. Pohoryles testimony. Mr. Niebler has lived at the Edgemoor High-Rise since 2004 and helped form a citizens group that is seeking to improve pedestrian safety in the Bethesda Central Business District. 4/29/13 T. 248. Mr. Niebler testified once his family moved there, he realized the narrow street had a downside – service and delivery vehicles cause congestion on Montgomery Lane because it is narrow and has inadequate parking. He feels that the pedestrian and vehicular traffic situation on the street is tense. The width and lack of parking undermines the pedestrian experience, especially when vehicles block the sidewalk or the street. This requires both vehicular and pedestrian traffic to have to negotiate around these vehicles and causes drivers to blow their horns. *Id.* at T. 250.

Mr. Niebler is especially concerned that the number of parking spaces provided will be inadequate. Having lived in two different condominiums where there was not enough parking, he does not agree with the Applicant that many of the units will go unused. He pointed out that residents without cars will schedule more deliveries to the street. According to him, “whether it's in the form of 120 more cars or a higher than average number of deliveries per resident, Montgomery Lane will pay the price in the form of increased congestion, a less walkable environment and diminishment of the mixed street concept.” *Id.* at T. 251. Mr. Niebler stated that “in approving the zoning change for the Holladay building, the County Council was not focused on maximizing density, dwelling units or MPDU's, but instead was very concerned with compatibility of a building with its surrounding area and the impact that the building and its residents would have on issues directly affecting the pedestrian-oriented quality of life on Montgomery Lane, as well as all users of the Bethesda Public Library.” *Id.* at 252. He characterized Montgomery Lane as a deliberate attempt to create a little oasis in the middle of the TS-R zone to provide a pleasant pedestrian corridor connecting the Metro and the Bethesda Public Library and that the density proposed here, combined with the lack of parking, will frustrate this goal. *Id.* at T. 254.

On rebuttal, Ms. Wiltshire testified that that she has reviewed a traffic tape previously submitted, but excluded from the record.<sup>8</sup> The video was taken from three cameras. Two of the cameras facing Montgomery Lane were posted on the corner of the existing structure on Lot 26, one of which could view Montgomery Lane west toward Arlington Road and the other was looking east toward Woodmont Avenue. An additional camera was posted on 4804 Montgomery Lane. The latter camera had a view of Montgomery Lane in front of the Edgemoor High-Rise. The cameras mounted on Lot 26 began taping on January 3, 2013, and the one on 4804 Montgomery Lane was posted on January 28, 2013. Each camera ran continuously for eight days from approximately 8:00 a.m. in the morning until 6:00 p.m. in the evening. 5/13/13 T. 156-159.

According to Ms. Wiltshire, the Applicant posted the cameras to determine whether Mr. Kabatt correctly assessed the low volume of traffic on Montgomery Lane. From the tapes, they extracted photographs of existing conditions at the same three times each day: 8:30 a.m., 12:30 p.m., and 4:30 p.m. They chose the mid-day time to reflect concerns about delivery vehicles. *Id.* at T. 160-161. She personally viewed the entire 120 hours of tape. *Id.* at 161. Selected photographs from the video, shown on the following page (Exhibit 106(r)), generally reflect what she saw on the tape.

She testified that she did not see any incident on the tape similar to the one described by Mr. Pohoryles. She produced a table of the delivery stops shown on the tape. The average delivery stop takes three minutes and there is an average of 4.67 deliveries per day. Rounding the latter up, delivery trucks are present on Montgomery Lane for an average of 15 minutes per day. The photographs submitted reflect that Mr. Kabatt's analysis is correct; there is little volume on Montgomery Lane. On the camera pointing to the west, she did observe one truck parking illegally, but it was not blocking the road or creating congestion. She also observed mail

---

<sup>8</sup> What was marked as Exhibit 106(4) was a videotape of Montgomery Lane taken for 8 days, 8 hours per day. This Office generally excludes these items from evidence so that the Council need not review the entire video. Ms. Wiltshire did review the video and was permitted to testify as to its content. 5/13/13 T. 153-155.



**Panorama Montgomery and West lane**

January 24, 2013 Left 08:30 AM



January 24, 2013 Right 08:30 AM



January 24, 2013 Left 12:30 PM



January 24, 2013 Right 12:30 PM

deliveries at 4:30 p.m., but this did not block traffic. *Id.* at 164-165. On the camera looking east toward the Edgemoor High-Rise, she testified that the lay-by there is almost always free and the loading bay is rarely used. She observed a UPS truck parked in the lay-by in front of the High-Rise at 12:30 p.m. on January 18<sup>th</sup>, 2013, and observed a 30-foot moving van and a car parked in the lay-by on other days. *Id.* at 165-168.

**2. Schools**

Technical Staff advises that there is sufficient school capacity to serve the proposed development. Exhibit 54, p. 26. Staff reports that the site is located within the Bethesda Chevy Chase Cluster (B-CC) service area, which includes Bethesda Elementary School, Westland Middle School and Bethesda-Chevy Chase High School. According to Staff, “the FY 2013



Subdivision Staging Policy finds that the elementary and middle school capacity to be adequate in the B-CC cluster. At the high school level a school facility payment is required for subdivision approval in FY 2013.” *Id.*

### **3. Water and Sewer Service and Other Utilities**

Mr. Irish testified that other utilities are available and adequate to serve the proposed development. Gas, electric, water, sewer, and storm drains are adjacent to the site. The property is within the W-1/S-1 water and sewer category. There is an 8-inch sewer line in Montgomery Lane that the Applicant will extend to West Lane. Gas mains and power lines are located both in Montgomery and West Lane. 4/16/13 T. 221.

Mr. Irish stated that a stormwater management concept plan has been prepared for the proposed development and reviewed and approved by the Montgomery County Department of Permitting Services. During site plan review, the Applicant must update its conceptual stormwater management plan and prepare conceptual sediment and erosion control plan. *Id.* at T. 221-222. Stormwater for the proposed development will be managed primarily by three different measures. A portion of the roof will be a green roof. The roof will have micro bio-filtration planters around part of the site which will drain to “silva cells” located under the sidewalk along West Lane. He testified that there are several ways to design a green roof. An “intensive” roof uses deeper soil and more intense planting. An “extensive” roof has a lighter weight soil, less soil volume and more basic planting. An extensive green roof has been approved conceptually for this development. The concept devotes about 6,000 square feet of the rooftop to the green roof. The preferred planting method is to have plants delivered to the site on trays that may be removed if certain plants are not thriving. The roof is protected with a waterproof membrane. *Id.* at 224-225.

The roof design is similar to that of a normal roof: it contains drains that collect water that is not absorbed by the plants. The water is then piped directly into the storm drain system because it has already been treated for quality. For impervious portions of the roof, runoff goes

through the building system (in a separate pipe from the treated stormwater) and flows to bio-planters along West Lane or within the northern edge of the building. This will be drained into an underground vault that will treat the stormwater using more conventional methods, such as a storm drain filter. The filter cleans the water, so it may be piped into the storm drain system. *Id.* at T. 225-227.

#### **H. Environmental Issues**

Technical Staff advises that there are no significant environmental features on the site. The proposed development has received an exemption from the requirements of the Forest Conservation Law because the site is less than one acre and will not require clearing of forest or specimen trees. Exhibit 54, p. 32. Mr. Irish testified that there are two significant trees on the site (i.e., with diameters of 24 inches or more) and both will be removed during construction. One is not in good condition and both are on the property line with Edgemoor at Arlington North. The Critical Root Zone of a specimen tree on the 4825 Montgomery Lane property may be impacted, but if both projects are under construction at the same time, the tree will have to be removed. In the event the subject property proceeds first, he opined that they could obtain a variance from the requirements of the Forest Conservation Law because the level of CRZ impact from this development will not harm the tree. 4/16/13 T. 230.

#### **I. Community Outreach/Response to the Project**

While perhaps not necessarily relevant to approval of the application, a major issue between the parties has been whether the Applicant adequately reached out to all of its neighbors. Many individuals from City Homes expressed the view that, while the Applicant had addressed other neighbors' concerns, the concerns of City Homes had been ignored. Specifically, City Homes had requested a reduction in the height and mass of the building, a larger setback from the street, and more public use space along Montgomery Lane.

Mr. Richard Lawch, President of the City Homes of Edgemoor testified that the City Homes Association had had several meetings with their counsel and with the applicant and its counsel, which he characterized as unproductive. He felt during those meetings that the Applicant had little interest in making any of the Association's suggested changes and seemed to have little concern for the neighborhood or its residents. 4/19/13 T. 224.

Mr. Lawch believes that the only concessions made by the Applicant have been reluctant responses to concerns expressed by the Planning Board and its staff and have been, in his opinion, "inadequate." *Id.* The applicant's original plans submitted had no step down at the top. Responding to Planning Board staff, the applicant first authored a 9-foot setback, then a 12-foot setback. In Mr. Lawch's opinion, the step back is not dramatic enough to mitigate the mass of the building. Another example of the Applicant's inadequate response to the Planning Board's concerns is the internal bay for delivery trucks, which was one of the City Homes' recommendations. According to him, however, the proposed bay is smaller than the Association requested and doesn't accommodate moving vans and other large trucks. *Id.* at T. 224-254.

While the Applicant did move the public use space to Montgomery Lane, it added only a cut out an approximate 600 square foot of on a semi-circular portion of the building and reduced the overall public use space from 10% to 14%. *Id.* at T. 225-226. Mr. Lawch explained that the City Homes Association wanted some sort of setback in front of the building:

We weren't demanding necessarily 15 feet, but we were suggesting that something be done up front and we also felt that there was no reason it had to be a win for us and a loss for the Villages of Bethesda. It could very well have come out of the mass of the building itself or the footprint of the building itself since we're arguing for a reduction in mass of the building, there's no reason why they can't have their 15 feet and we can have some manageable setback of the building on the south side or on Montgomery Lane." *Id.* at T. 227.

All 29 unit owners in City Homes oppose this development. Exhibit 126. City Homes also made clear that they did not desire the additional setback area along Montgomery Lane at

the expense of the Villages of Bethesda (VOB); rather, they believe that the size of the building should be reduced to accommodate both. *Id.*

On the merits of the application, existing residents expressed concern over the mass of the building. Ms. Susan Turnbull, a resident of City Homes, testified that the design will make her feel “surrounded” by large projects on all sides. 4/17/13 T. 213. This is particularly true given the 70-foot Hampden Lane Building adjoining the south side of City Homes. She is concerned that the light and views currently available to City Homes will be adversely altered by the proposed development. *Id.* at 199-213. Residents expressed concern that the density proposed will exacerbate existing parking problems on the street, both due to an increase in service vehicles and because of the project’s parking ratio. *Id.* at T. 259-264, 274. They also object to the building’s contemporary architecture and use of glass windows, likening it to a commercial building. 4/19/13 T. 14-23. Those opposing the application feel that the “baseline” for comparing the compatibility of the project should be the Holladay Project, which had been litigated and approved. 4/8/13 T. 92. In their opinion, the Project remains relevant because it was used to measure the compatibility of the other approved developments on Montgomery Lane. 4/17/13 T. 213.

Ms. Wiltshire described the Applicant’s outreach to the community. Ms. Wiltshire testified that they had made a number of changes to the project to address the community’s concerns. They included a binding element limiting the height of lighting in the private amenity area to address the concerns of the developer of the Edgemoor at Arlington North. 5/13/13 T. 145. They also met with representatives of the Villages of Bethesda who had opposed the Holladay Project. They were initially concerned because the Holladay Project had a northern setback of 20 feet. The Villages of Bethesda requested that the fifteen-foot setback be made a binding element because they some of their units have views of the property and the building

will cast shadows on some area. They felt that the proposed development was an improvement over the Holladay Project because the setback area will be landscaped green area rather than loading and access. The Villages of Bethesda also asked the Applicant to include a binding element not to have balconies on the northern façade and to have a construction agreement with the Villages of Bethesda. The Applicant agreed to this. *Id.* at T. 146-147.

The Applicant contacted Mr. Chipouras, who lives at 4828 West Lane. They addressed a number of concerns he had, including screening the transformers along the property line and providing a construction agreement. Mr. Chipouras also asked the Applicant to install two 20-foot wide driveway aprons, to which they have agreed. Finally, he has asked them to move the lay-by closer to Montgomery Lane. The Applicant has agreed to speak with DOT about the latter request. *Id.* at T. 147.

They have also had discussions with the owners of 4825 Montgomery Lane, Sandy Spring Builders. They had no issues with the project and agreed to support it. *Id.* at T. 147-148.

According to Ms. Wiltshire, the Applicant has met with representatives of City Homes on several occasions and has tried to address their concerns. As originally designed, the building did not have any step-backs on Montgomery Lane because none of the other buildings fronting that street have step backs. The step back on 4901 Montgomery Lane is very small and, in her opinion, does not significantly reduce the massing of the building. They added the 9-foot step back before going to the Planning Board; they increased it to 12 feet after the Planning Board hearing. This step back mirrors the approximate height of City Homes. They have also a binding element committing to a pocket park substantially the same as that shown on the development plan. They have also agreed to add plantings to the area to make it green. Finally, DOT approved the Holladay Project with only one lay-by. They now have three loading areas to address the concerns regarding congestion on Montgomery Lane. *Id.* at T. 151. Another major



change to the building made in response to the community's concerns is the curvature in the façade. They were told that the box-like design of the initial building was ugly and had some concerns that the original location of the public use space was not functional. The Applicant's entire team went through these concerns and came up with the pocket park. They thought that the additional 28-foot setback would respond to some of the concerns expressed. It also narrows the Montgomery Lane frontage. They also added articulating elements, such as the indentations along West Lane, to give the building more interest. *Id.* at T. 153-154.

The Villages of Bethesda (VOB) submitted a written testimony into the record regarding the binding element requiring a 15-foot setback along the northern property line. It is important to them that the setback be maintained because it preserves some views along that property line and mitigates the shadows that will be cast by the building. The private amenity area along the western property line is also important to the Villages because it provides additional light and air to their development. The VOB does not feel that the concerns of City Homes should be addressed at the expense of the VOB. Exhibit 127.

### **J. Public Interest**

The Applicant believes that the project furthers the public interest by satisfying the goals of the Sector Plan to locate high-density housing close to transit more than other developments in the area. The Applicant submitted a summary comparing the unit sizes and densities in the surrounding projects (Exhibit 84), shown on the following page. Mr. Landfair testified that the proposed development will increase the density in the area from 46 dwelling units per acre to between 53 and 56 dwelling units per acre. It will also decrease average unit size from 2,282 square feet to 2,124 square feet. As a result, he opined the project will add diversity to the housing stock, both in terms of affordability, the potential for rental units and because the units are much smaller than those in the surrounding area. 4/8/13 T. 49-50.

**Development Analysis of  
Areas Zoned TS-R Pursuant to  
1994 Bethesda Sector Plan**

<b><u>Project</u></b>	<b><u>Total Number of Units</u></b>	<b><u>Units Per Acre</u></b>	<b><u>Land Area (square feet)</u></b>	<b><u>Average Unit Size<sup>1</sup> (square feet)</u></b>	<b><u>Total MPDUs</u></b>
SJG – West Lane	100-120	112-135	38,804	860	15-18
4901 Hampden	34	48	30,891	2,150	6
Highrise Edgemoor	54	102	23,136	1,900	0
Low Rise Edgemoor	12	27	19,638	2,600	0
City Homes	29	27	47,627	2,460	0
Villages of Bethesda	21	23	39,360	2,700	0
Sandy Spring LMA G-908 Pending	4	27	6,217	3,300	0
Edgemoor at Arlington North (Rothstein)	31 (maximum)	35	38,079	1,770	4
Hamden Lane Associates	60	81	22,611	1,380	9

**SIGNIFICANT TOTALS**

	Without West Lane	With West Lane
Average Units Per Acre	46	53-56
Average Unit Size	2,282 s.f.	2,124 s.f.
MPDUs	19	34-37

**Exhibit 84**

He further testified that the development will further goals of the Housing Element of the General Plan adopted by the Council in March, 2011. The goal of the Housing Element is to provide housing in the County for seniors, for the disabled, MPDUs and affordable housing. 4/8/13 T. 43. It fulfills these objectives by (1) adding new housing in mixed-use transit oriented areas near employment, (2) creating smaller, more energy efficient units (because the building will be LEED certified), and (3) creating the potential for rental units, and (4) fulfilling the

neighborhood design identified in the Element. In his opinion, the development will contribute to a very pedestrian-friendly network. *Id.* at T. 44-46.

Those opposing the application agree that providing affordable housing is an important goal, but contend that it shouldn't be used to sacrifice the vision for the District contained in the Sector Plan. Nor should it be used to permit development incompatible with the surrounding area.

#### **IV. SUMMARY OF THE HEARING**

The Applicant presented five expert witnesses: Mr. William Landfair (land planner), Mr. Marius Radulescu (architect), Mr. Perry Berman (land planner), Mr. David Judd (landscape architecture), Mr. Chris Kabatt, (transportation engineering), and Mr. Charles Irish, Jr. (civil engineering). In addition, Ms. Cheryl Cort testified on behalf of the Coalition for Smarter Growth (4/15/13 T. 11-40) and Mr. Daniel Reed testified on behalf of Action Committee for Transit (ACT). 4/15/13 T. 41-45. One expert witness appeared on behalf of those opposing the application, Mr. Kenneth Doggett (land planner). In addition, several residents of City Homes and the Edgemoor High-Rise testified. Their testimony is set forth in this Report where relevant; a complete summary of testimony is included in the Appendix.

#### **V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for reclassification to the TS-R Zone, to consider whether the application, including the development plan, fulfils the "purposes and requirements" set forth in Code Section 59-C for the new zone. In making this determination, the law expressly requires the District Council to make five specific findings, "in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification." Therefore, these findings are an essential part of the Hearing Examiner's Report and Recommendation.

The five specific findings required by §59-D-1.61 of the Zoning Ordinance are:

(a) *[That t]he proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies...*

(b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

(d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

(e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. In addition, the State law mandates that the zoning power be exercised in the public interest:

(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;

(2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and

(3) protect and promote the public health, safety, and welfare. *Md. Land Use Article Code Ann., § 21-101(a)(4)(i).*

In sum, there are six findings required by §59-D-1.61 (a) through (e) and the public interest. The “Required Findings” are discussed below in the order set forth in the statute to facilitate review. Based on this review, the Hearing Examiner concludes that the evidence in this case supports some, but not all, of the required findings.

As a preliminary matter, City Homes contends that a development plan from a prior application may not be expanded to include new area rezoned in a separate application. This is because, according to City Homes, a development plan is “married” to the former application and therefore, is subject to the prohibition on expanding the area of a rezoning case. In support of this, City Homes argues that the TS-R Zone (Section 59-C-8.45) states that approval of the application incorporates approval of the development plan. Section 59-H-2.24 then provides that the land area of applications for rezoning may not be expanded, thus limiting expansion of a previously approved development plan as well. The Applicant argues that this position elevates form over substance, requiring a new rezoning application to cover area already rezoned to the TS-R Zone. They further argue that the development plan and the local map amendment are governed by two separate procedures, one of which prohibits expansion (i.e., the rezoning application) and one of which does not (i.e., the development plan). 1/11/13 T. 8-20.

Based on this record, the Hearing Examiner finds that a development plan amendment may be expanded to combine area already rezoned with new area to be rezoned to the same zone. The procedures governing local map amendments explicitly prohibit expansion where those governing development plans do not. Nor could City Homes provide a compelling policy justification as to why an applicant must file a new zoning application for land already rezoned to the desired zone.

#### **A. Substantial Compliance with County Plans and Policies**

The first required finding is that:



*The zone applied for substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. . .*

### **1. The Applicable Master Plan or Sector Plan**

The Hearing Examiner finds that the land use and density of the proposed development substantially complies with the Sector Plan, as did Technical Staff and the Planning Board. The Sector Plan recommends the TS-R Zone for the area subject to the development plan and multi-family residential is a permitted use in the Zone. The density also substantially complies with the Sector Plan. One important goal for the District is to locate residential densities close to Metro. For that reason, the Plan recommends a minimum number of units (i.e., 45 dwelling units per acre) as well as a maximum number of units i.e., (“about” 100 dwelling units per acre) for development within the District. Technical Staff advises that residential densities envisioned by the Plan have not been achieved and concluded that this application will “help fulfill the overall density envisioned” by the Sector Plan. Exhibit 54, p. 20. The Applicant submitted evidence and expert testimony that the District is currently developed at a density of 46 dwelling units per acre, which will increase to between 53 and 56 dwelling units per acre with the project as proposed. Exhibit 84; 4/8/13 T. 50. Based on the evidence presented, the Hearing Examiner finds that the development does further the Sector Plan’s goal to locate high-density housing close to transit, as did Technical Staff.

Section 59-D-1.61 requires “substantial compliance” with the Sector Plan’s land use and density, but requires only that remaining aspects “not conflict” with various County Plans. Nevertheless, the Hearing Examiner concludes that the development substantially complies with other guidelines of the Plan.

The Hearing Examiner disagrees with the opposition that the use of the term “full” 2.5 FAR and the phrase “about 100” dwelling units in the Sector Plan represents an absolute cap on development because the Sector Plan must be read together with language in the TS-R Zone. Section 59-C-8.42 provides:

(c) The density of development must not exceed the FAR or the dwelling units per acre allowed by the zone, except that the maximum density permitted may be increased to accommodate the construction of moderately priced dwelling units as required by Chapter 25A and the construction of workforce housing units under Section 59-A-6.18 and Chapter 25B. The maximum number of dwelling units or residential FAR may be increased as needed for any MPDU density bonus and any workforce housing units provided on-site. The provision of MPDUs or workforce housing units does not authorize a reduction in any public facility and amenity or active or passive recreation space recommended in a master plan or sector plan.

Section 59-D-1.61 of the Zoning Ordinance mirrors this language, permitting the Council to approve a development that exceeds the height and density recommended in a master plan when the MPDUs provided exceed the minimum required:

(a) The proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. However:

(1) To permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a development plan may exceed:

(A) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but must not exceed the maximum density of the zone; and

(B) any building height limit recommended in a master plan or sector plan, but must not exceed the maximum height of the zone.

The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units.

Were the Applicant *not* able to increase the height recommended in the Sector Plan to

accommodate MPDUs, these provisions would essentially be “read out” of the ordinance. *WFS Fin., Inc. v. Mayor of Baltimore*, 402 Md. 1, 13-14 (2007).

The evidence reflects that the bonus height and density permitted for providing 15% MPDUs was adopted by the Council *after* adoption of the Sector Plan.<sup>9</sup> As the Council is presumed to have knowledge of existing laws at the time it made these changes, the Hearing Examiner may only conclude that it intended to permit Applicants to exceed the density recommended by 22%, with a concomitant increase in height. *Id.*, 402 Md. 13-14 (2007) (The legislative body is presumed to have had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law.) Nor does she agree with the opposition that the maximum density is limited to 100 dwelling units per acre because the explicit language of the Plan does not do so—it uses the phrase “about” 100 dwelling units per acre. *Id.* Mr. Radulescu explained how the bonus density was calculated and the need for an additional floor. He also pointed out that the Applicant attempted to minimize its impact on the height by reducing the height between slabs. As the density of 135 dwelling units per acre does not exceed the maximum of 150 dwelling units per acre permitted in the TS-R Zone, the Hearing Examiner finds that the height and density substantially comply with the Sector Plan.

For the same reasons that she finds the height of the building to comply substantially with the Sector Plan, the Hearing Examiner concludes that the number of stories proposed by the Applicant substantially complies with the Sector Plan. Although it recommends buildings between three and six stories, Mr. Radulescu testified that an additional floor was necessary to

---

<sup>9</sup> Some testimony indicated that the exemptions to height and density set forth in the TS-R Zone §59-D-1.61 were adopted two years after the Sector Plan. Amendments to §59-D-1.61 of the Zoning Ordinance mirrored these provisions and were adopted in 2004. *See*, Montgomery County, Md., Ord. No. 15-36 (November 30, 2004). The Council amended this provision in 2008 without changing the allowances for bonus density and height. Montgomery County, Md., Ordinance No. 16-28 (October 21, 2008). The Hearing Examiner takes official notice of these Council actions. *OZAH Rules of Procedure*, Rule 4.8.

accommodate the bonus density. The Hearing Examiner concludes that this recommendation must be read in light of the Zoning Ordinance provisions permitting deviations in height for MPDU bonuses. Without the flexibility to add a single additional story, the Council's policy could be defeated. Based on this evidence, the Hearing Examiner concludes that the 5-foot difference between the height proposed and that recommended, created by the 7<sup>th</sup> story, but is not a substantial enough deviation from the Sector Plan to deny the application at the rezoning stage.<sup>10</sup>

The second height-related issue is whether the development conforms to the “tenting concept” adopted by the Sector Plan. The Hearing Examiner agrees with those opposing the application that the Plan employs one tenting concept that begins at the Metro Core and proceeds generally downward toward the edge of the CBD at Arlington Road. She also concludes that the Plan calls for a separate 65-foot height limit beginning at Woodmont Avenue transitioning westerly to 35 feet along Arlington Road. She disagrees, however, with the opposition's position that the Plan creates a tenting concept which *requires* each succeeding building to be lower than the one immediately to the east. While there is language in the Plan stating that 6-story heights are “preferred” closer to Woodmont Avenue, this is not mandated either by the height limits imposed or by the Plan's explicit language.<sup>11</sup> Even strict adherence to the height limits in the Plan permits heights of up to 65 feet for the majority of the length of Montgomery Lane, transitioning to 35 feet closer to Arlington Road. As the Plan is a guide only, and even these guidelines use the term “preferred,” the Hearing Examiner finds that the heights of buildings

---

<sup>10</sup> The TS-R Zone requires the final height of the project to be determined during site plan review. Thus, the actual height of the building may be lower than the maximum height approved at the zoning stage, which is what occurred during site plan review of 4825 Montgomery Lane. *Montgomery County Zoning Ordinance*, §59-C-8.51.

<sup>11</sup> The Applicant presented evidence that other approved developments in the District vary from the heights recommended in the Sector Plan, although they use roof line step backs to create a compatible transition in height.

along Montgomery Lane need not decline in a perfectly straight downward angle from a 65-foot height limit along Woodmont Avenue to comply substantially with the Plan.

Further, the Hearing Examiner is persuaded that the Plan's goal to gradually transition heights from east to west *will* be accomplished with the proposed development. The Hearing Examiner finds nothing in the Hearing Examiner's recommendation for the Edgemoor High-Rise that requires that building to be *ignored* when considering subsequent approvals. She interprets the precedential language used in the Hearing Examiner's report on the Edgemoor High-Rise as meaning only that its location at the time, combined with other factors, was unusual enough that other projects would not be able to justify similar deviations in height. Having found that the proposed building substantially complies with the height limits, she does not find that the language conveys a mandate that future tenting must be measured from an imaginary 65-foot height limit from Woodmont Avenue, nor could it legally. Certainly, the District Council may consider the existing conditions in determining whether the goals of the Sector Plan will be achieved. The District Council obviously found that the 100-foot height limit of the Edgemoor High-Rise substantially conforms to the Sector Plan, as did the Hearing Examiner. It is difficult to interpret the Plan so that a building of 100 feet that has been found to substantially conform to the height limit must be completely ignored when determining whether as-built conditions will achieve the Sector Plan's goals. When the Edgemoor High-Rise is considered in the east-west transition from Woodmont Avenue to Arlington Road, the skyline does show a gradual decline as shown on Exhibit 79. Mr. Radulescu opined that planning concept of transitioning heights must be read in the context of the Sector Plan's guidelines to create a varied skyline. It may vary up and down during the gradual decline to the edge of the District. 5/13/13 T. 17-18. Based on this evidence, the Hearing Examiner finds that the height of the proposed development



substantially complies with the Sector Plan to transition heights gradually from Woodmont Avenue to Arlington Road.

Those opposing the application also object to the development's flat roof, contending that this violates the Sector Plan's recommendation to enhance the residential character of the building by using hip roofs, gables, turrets and other types of pitched roof lines. *Plan*, p. 85. The Applicant does not argue that the roof top incorporates these features; rather, it asserts that this guideline is both unnecessary and obsolete. Mr. Radulescu testified that the guideline is obsolete because it doesn't account for a green roof as well as roof top amenity areas. A green roof will be incorporated into this project and a roof top amenity area may be included. 4/15/13 T. 90-91. Technical Staff found roof top articulation unnecessary because there is sufficient articulation elsewhere in the building to maintain the residential character intended by the Plan. Exhibit 54, p. 23. Mr. Radulescu opined to this effect as well. 5/13/13 T. 26-27. Based on this evidence, the Hearing Examiner agrees and so finds.

The urban design guidelines recommended by the Sector Plan also suggests that unit entrances along the street be on the first floor to encourage street life. The Applicant has provided a single entrance on the first floor at the intersection of Montgomery Lane, but not individual unit entrances, an item requested by City Homes. 4/19 Tr. 256-257. City Homes requested the Application to include these ground floor entries along West Lane to ensure that deliveries occur there rather than on Montgomery Lane. *Id.*

The Applicant acknowledges that the development plan does not comply with this guideline. 4/8/13 T. 119. Mr. Landfair characterized the urban design guidelines, however, as "flexible standards" that do not require substantial conformance with the Sector Plan (as opposed to land use and density). *Id.* at T. 274. According to him, individual unit entrances have not

been required in other developments on Montgomery Lane. He opined that the purpose of the recommendation is to activate the street. Mr. Radulescu testified that the design includes “French balconies” along the Montgomery Lane frontage to activate the street. Technical Staff concluded that these balconies were sufficient to achieve an active street presence. Exhibit 54, p. 23.

Based on the evidence, the Hearing Examiner finds that the proposed design does substantially conform to the intent of the recommendations of the Sector Plan, as it has been interpreted elsewhere on the street. There are several built and approved developments along Montgomery Lane which *do not* have individual entrances; these include the Edgemoor High-Rise, 4825 Montgomery Lane, and 4901 Hampden Lane. Both Mr. Irish and Mr. Landfair testified that the location of the public use space at the entrance will enhance and activate the pedestrian environment unlike other public use space in the area. Mr. Irish testified that the steps leading up to the end cap units on City Homes are “major structures” that do not read as public space, as are the accessible ramp and steps in front of the Edgemoor High-Rise. Nor did the opposition present any expert evidence that the ground floor entrances through the rear garages of the City Homes units serve to activate the street. Based on the evidence before her, the Hearing Examiner finds that the combination of the location of the building’s entrance along Montgomery Lane and its incorporation with the project’s public use space will achieve the goal of the Sector Plan to activate the street.

The development plan does comply with other urban design guidelines recommended by the Plan. One of these is to incorporate individual parcels in the unified developments. She agrees with Mr. Landfair that the development does this by incorporating Lot 26 into the former Holladay project.

The design guidelines also call for low-rise buildings to fill out a parcel. Technical Staff concluded that low-rise buildings are generally less than five stories, but found that the 7-story height substantially complied with the Sector Plan because it is necessary to provide MPDUs. The Hearing Examiner doesn't necessarily agree with Staff that a 6-story building should be deemed "mid-rise" in this case, as this is the height recommended in the Plan for the "low-rise, high density urban village." Assuming that 7 stories is "mid-rise," she agrees with Staff that the development plan substantially complies with the Sector Plan because the 7<sup>th</sup> story has been "squeezed" so that the overall height is only 5 feet above the 65-foot limit recommended by the Plan. She agrees with Staff the 12-foot step back at 50 feet assists in mitigating this height and that the building fulfills the Plan's recommendation to have buildings "fill out" the parcel.

The final urban design guideline calls for parking to be located either underground or in rear decks so that it may not be seen from public streets. Except for the loading areas on West Lane, all parking will be contained in an underground garage. As a result, the Hearing Examiner finds that the development plan substantially conforms to this Sector Plan recommendation.

## **2. The General Plan and the County Capital Improvements Program**

There is no evidence in this case that the proposed development conflicts with the County's General Plan. Mr. Irish testified that it does not conflict with the County's Capital Improvements Program. 4/17/13 T. 82. Having no evidence to the contrary, the Hearing Examiner finds that the project conforms to the County's General Plan and Capital Improvements Program.

## **3. Other County Policies (Annual Growth Policy and Adequate Public Facilities Ordinance)**

At the rezoning stage of development approvals, an applicant must demonstrate that there is a "reasonable probability that available public facilities and services will be adequate to serve

the proposed development under the Growth Policy standards in effect when the application is submitted.” *Montgomery County Code*, §59-H-2.4(f).

Under the current 2012 – 2016 Subdivision Staging Policy (Staging Policy), “[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” Council Resolution 17-601, p. 21. There is no such evidence in this case. We therefore turn to the remaining three public facilities, transportation, schools and water and sewer service.

a. Transportation

Technical Staff found that transportation facilities would be adequate based the LATR Guidelines, but applying the policy area test in effect prior to the Council’s adoption of the 2012-2016 Subdivision Staging Policy. Exhibit 54, p. 28-31. Mr. Kabatt testified at length that the transportation facilities will be adequate to serve the development under both the LATR and the current TPAR guidelines. 4/15/13 T. 233-239. There is no evidence in the record to the contrary.<sup>12</sup> For these reasons, the Hearing Examiner finds that transportation facilities will be adequate to serve the proposed use.

b. School Capacity:

Technical Staff advises that school capacity is adequate to serve the proposed use, although the Applicant may have to make a school facility payment at the time of subdivision approval. 5/13/13 T. 26. Having no evidence to the contrary, the Hearing Examiner finds that school facilities are adequate to serve the proposed development.

---

<sup>12</sup> The Hearing Examiner addresses whether the project will adversely impact operational conditions Montgomery Lane in a separate section.

c. Water and Sewer Service:

Under the Staging Policy, applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available. Council Resolution No. 17-601, p. 20. Mr. Irish testified that water and sewer systems are adjacent to the site, as are gas, storm drains and electricity utilities. The property is within the W-1/S-1 water and sewer category. There is no evidence to the contrary and the Hearing Examiner finds these utilities adequate to serve the proposed development.

d. Housing Element of the General Plan:

The Housing Element of the General Plan encourages the provision of affordable housing, particularly in areas close to transit facilities. Approved in 2011, one of its major goals is to provide more affordable housing close to employment and transit. *Approved and Adopted Housing Element of the General Plan* (May 18, 2011). The Housing Element also calls for new development to incorporate green and energy efficient standards. *Id.* at 16. Mr. Landfair testified that the development fulfills these objectives by (1) adding new housing in mixed-use transit oriented areas near employment, (2) creating smaller, more energy efficient units (because the building will be LEED certified), and (3) creating the potential for rental units, and (4) fulfilling the neighborhood design identified in the Element. In his opinion, the development will contribute to a very pedestrian-friendly network. *Id.* at T. 44-46.

Based on this evidence, the Hearing Examiner finds that the proposed development will be consistent with applicable County plans and policies.

**B. Zone Requirements, Safety, Amenities and Compatibility**

The second required finding is:

*That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

## **1. Compliance with Zone Purposes, Standards and Regulations**

### **a. Compliance with the Purposes of the TS-R Zone**

The TS-R Zone is a “floating zone,” intended to be used in transit station development areas or on property adjacent to a Central Business District provided that it is within 1,500 feet of a metro transit Station.” *Montgomery County Code*, §59-C-8.21(a). It is also intended to be placed in areas where multi-family residential already exists or where it is recommended on an approved and adopted master plan. *Id.*, §59-C-8.21(b). Finally, the Zone is intended to be used to “facilitate and encourage innovative and creative design and the development of the most compatible and desirable pattern of land uses” that take advantage of the flexible standards of the Zone. *Id.*, §59-C-8.21(d).

As indicated by uncontroverted evidence and testimony in this case, the subject property is within a Transit Station Development Area and District. Exhibit 54, p. 24; 1/11/13 T. 111. Technical Staff advises that the property is located approximately 950 feet from the Bethesda Metro Station and it is designated within the Transit Station Residential District of the Sector Plan. Exhibit 54, p. 24. As is clear from the evidence, the development meets the first two intentions of the TS-R Zone.

Technical Staff found that the development met the final intent of the zone, to use the flexibility provided to achieve creative design and desirable land uses. They advise that the setbacks ensure that detrimental effects to adjacent residential properties will be minimized and the building will add to a cohesive building line along Montgomery Lane. Exhibit 54, p. 25.



The Hearing Examiner further finds that the location of the concave public use space will both increase setbacks along Montgomery Lane and mitigates the mass of the buildings. For these reasons, she finds that the development plan meets this intent of the Zone.

Section 59-D-1.3 requires that the development plan “clearly indicate” how the proposed development meets the purposes of the applicable zone. The purposes of the TS-R Zone are set forth in Code §59-C-8.22:

*(a) To promote the effective use of the transit station development areas and access thereto;*

Technical Staff found that the location of up to 120 multi-family units within walking distance of the transit station achieved this purpose of the TS-R Zone. *Id.* The Hearing Examiner agrees with Technical Staff that the development achieves this purpose.

*(b) To provide residential uses and certain compatible non-residential uses within walking distance of the transit stations;*

Staff advises that the development is within walking distance (i.e., 950 feet) of the Bethesda Metro station. The Hearing Examiner finds that this purpose has been fulfilled, as did Technical Staff.

*(c) To provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the county; and*

Technical Staff found that the increased density (above that of the Holladay Project) will contribute to greater diversity of housing choices, both with the addition of more MPDUs and because the unit sizes will be much smaller than the majority of those currently existing or approved in the area. *Id.* In addition, this development offers an opportunity to introduce rental

units in the area, although this is not a binding element of the development plan. Based on this evidence, the Hearing Examiner finds that this purpose has been met.

*(d) To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.*

The applicant's development plan is discussed at length in Section III.C of this report. In their initial recommendation, Technical Staff found that the setbacks provided adequately protected adjacent residential properties. *Id.* Subsequently, the Applicant redesigned the project to move the public use space to Montgomery Lane, which increases the Montgomery Lane setback for a portion of Montgomery Lane, decreases the length of the building's frontage on Montgomery Lane, and provides a viable public use space, as determined by the Planning Board and Technical Staff. Exhibit 105. The Hearing Examiner finds the development plan to be consistent with this requirement of the Zoning Ordinance.

**b. Compliance with the Standards and Regulations of the TS-R Zone**

Mr. Radulescu testified that the proposed plan meets the development standards of the TS-R Zone. There are few mandatory standards in the Zone. The property exceeds the minimum lot area of 18,000 square feet as the gross tract area of the property is 38,800 square feet and the net lot area is 26,410 square feet. While the maximum base density in the zone is 2.5 FAR, the TS-R Zone permits a bonus density of up to 3.05 FAR to provide MPDUs. The FAR of the proposed building is the maximum 3.05 FAR permitted because 15% of the units will be MPDUs.

The TS-R Zone permits a maximum base density of 150 dwelling units per acre, which may be increased to accommodate MPDUs. The development proposes a maximum of 120 dwelling units, the equivalent of 135 dwelling units per acre. A binding element commits the Applicant to a minimum of 100 dwelling units per acre.

The TS-R Zone requires a minimum of 10% of the gross tract area to be public use space. As shown in the Table from the development plan in Section III.C. of this Report, this development plan provides that minimum amount. In addition, the total amount of open space, including active or passive recreational areas, must be 30%. The development plan shows that the open space exceeds the 30% minimum, as confirmed by Mr. Radulescu. The TS-R Zone requires 20% of the gross area to be active and passive recreational space; the proposed private amenity space is 26% of the site area. Exhibit 127; 4/15/13 T. 54-55.

## **2. Safety, Convenience and Amenity of Residents**

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” The record includes a significant amount of evidence regarding the amenities to be provided. Mr. Landfair testified that the Applicant is providing a substantial amount of open area with both hardscaping and landscaping within the property, including the private amenity areas to the north and west and the public use space along Montgomery and West Lanes. In addition, the Applicant added a binding element (Binding Element 23) that it will propose amenity area on a portion of the rooftop at site plan. 4/8/13 T. 274; Exhibit 24. Based on this evidence, the Hearing Examiner finds that the development plan provides a “maximum safety, convenience, and amenity of the residents,” as required.

## **3. Compatibility with Adjacent Development**

The Hearing Examiner finds that the mass, scale, height and density of the proposed development is sufficiently compatible with the neighborhood to proceed beyond the zoning stage. She agrees with the opposition that the height of City Homes should be 48 feet when used to assess the compatibility of the proposed development with City Homes.

While those opposing the application make general allegations that differences in ground elevation will cause the project to loom above City Homes and other developments in the area, there is nothing in the record specifically quantifying or demonstrating this effect. The Applicant submitted expert testimony that the roof top step back and contrasting materials on the top two floors of the proposed development provided a compatible north-south transition between City Homes and the proposed development, as evidenced by Exhibit 80. The Planning Board and Technical Staff agreed with this assessment. There is nothing in the record indicating that this exhibit is woefully inaccurate. Even assuming the 48-foot height of City Homes, the difference in the height of the step back and the height of City Homes is only 2 feet. Further, the difference in elevation between the City Homes and the proposed development, according to Ms. Turnbull, is 3 feet. Exhibit 101(i). Those opposing the Application have provided no evidence that the combined 5-foot difference significantly alter the transition depicted and found compatible by the Planning Board and Technical Staff. There was testimony that the proposed development would block certain vistas which currently exist for residents of City Homes. The Hearing Examiner knows of nothing that would entitle existing residents to particular views in the circumstances presented here. Certainly, those in the surrounding area should be protected from lengthy shadows; however, the expert testimony indicates that this project will not cast shadows on City Homes because it is north of the townhouses.

Mr. Irish and Mr. Radulescu testified that differences in elevation will be imperceptible from the ground because the pedestrian's perception changes with the elevation. While there are

grade changes between the City Homes and Hampden Lane, Mr. Radulescu testified that elevations could theoretically matter where there are not intervening buildings, but testified that the project would not be visible from Hampden Lane. Without more concrete evidence from the opposition that elevations will cause the development to be incompatible with the surrounding area, the Hearing Examiner finds that the evidence supports a finding that the height of the building is compatible with the surrounding area. Nor does she find that the evidence supports a finding that the slight increase in height between the proposed development and 4825 Montgomery Lane will adversely affect the area. While there are some variations in the heights, she agrees with Mr. Radulescu that heights need not transition downward in a straight line.

There were also contentions that the height of the mechanical penthouse (i.e., approximately 10-12 feet) would exacerbate the building's mass from the street, although little expert testimony supported this. The Applicant added a binding element that the penthouse would be setback no *closer* to the street than shown on the existing exhibits. With this binding element, the Hearing Examiner finds that there is sufficient evidence for approval of the rezoning application, and this matter may be explored further, if deemed necessary, at the site plan stage.

She also finds that the development's setbacks are compatible with the surrounding area. Mr. Irish presented detailed measurements of the setbacks along the entire length of Montgomery Lane; the setbacks provided for the proposed development exceed or equal those in other developments along the street. While in this instance, the setback is combined with a 70-foot height, the Applicant has incorporated revisions to the design to mitigate the building's mass, such as the 5<sup>th</sup> floor step back with contrasting colors on the top floor, the concave scallop running the full length of the building, and the undulating façade along West Lane. The curved frontage along Montgomery and West Lane acts to increase the setback from City Homes. While City Homes desires a 15-foot building setback, the Applicant presented expert testimony

that the difference would have little impact on compatibility and impairs the important goal of providing a continuous street edge. 4/8/13 T. 69-74. Technical Staff also found creating a continuous building edge an important component of the development plan. Exhibit 54. They also pointed out that the difference between the building face of City Homes and the proposed development is 73 feet, the largest on Montgomery Lane. While Mr. Doggett disagreed somewhat summarily with this assessment, asserting that a 15-foot setback would increase the public use space, the Hearing Examiner finds that the evidence regarding the need to provide a solid building edge along the street and the large distance between building facades is more detailed and persuasive.

As to the building's mass, the Applicant responded to concerns raised by creating the scallop that runs the full height of the building, increasing the step back from 9 to 12 feet, including French balconies along the Montgomery Lane façade, and creating undulations along the West Lane façade, which it asserts are reminiscent of townhouses. The Hearing Examiner believes that the overall mass of the building has been sufficiently reduced for the purposes of rezoning.<sup>13</sup>

Also at issue is whether the architecture sufficiently declares the building's residential character and compatibly relates to the surrounding area. Mr. Radulescu testified at length regarding the architectural details designed to emanate a residential character. These included French balconies, a defined base, middle, and top, making the top two floors lighter and reflective of light changes, and the undulations on the West Lane Façade. Technical Staff found this articulation and fenestration sufficient to be compatible with the existing residential character of the surrounding area, as did the Planning Board. Mr. Doggett asserted that the use

---

<sup>13</sup> While Mr. Radulescu asserts that nothing more needs to be done to the building's architecture, the final decision on this will be made by the Planning Board if the Council approves this application.



of glass around the scallop emphasized the building's mass, but did not provide a detailed explanation of why this would be the case. He also speculated that the glass would cast light on the area at night without a basis. Considering the well-thought out rationale submitted by the Applicant's architect and the recommendations of both Technical Staff and the Planning Board, the Hearing Examiner finds that the Applicant has successfully met its burden of proof that the proposed development is compatible with the surrounding area.

### **C. Internal Vehicular and Pedestrian Circulation Systems and Site Access**

The third required finding is:

*That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

Whether the application can satisfy this finding is the source of much of the controversy in this case. After carefully reviewing the testimony and evidence submitted, the Hearing Examiner finds that the weight of the evidence falls in favor of the Applicant because its evidence is more objective, quantifiable, and systematic.

In order to determine congestion levels on Montgomery Lane, the Applicant's expert transportation engineer performed field observations of the existing queues, which are only one to two vehicles long. He also performed a delay/queuing analysis using the protocols of the Highway Capacity Manual. This projected that queues would remain essentially the same after development of the project. Because the existing volumes on the street are already quite low, he opined that the project's impact on traffic will be "imperceptible." 4/15/13 T. 246.

He also opined that vehicular access will be safe, adequate and efficient because West Lane (after the Applicant's dedication) will have a sufficient paved area to accommodate traffic. He also pointed out that moving the development's access to the northern end of West Lane will

minimize conflicts along Montgomery Lane. The addition of two loading bays above the required minimum, all of which will be accessed from West Lane, will eliminate the need for service vehicles to stop on Montgomery Lane. He also testified that parking is adequate to serve the use. Census data indicates that 36% of renters in the area do not have cars. Even if, however, the property is developed as condominiums, Mr. Kabatt testified that parking opportunities are available in nearby public garages.

While those opposing the application expressed skepticism that service vehicles will actually use the West Lane loading areas because they are less convenient, their testimony amounted to no more than skepticism. Similarly, while residents presented pictures of congestion problems that have occurred on Montgomery Lane due to service and other vehicles parking illegally on Montgomery Lane, there was no evidence that the proposed development, which will utilize West Lane for deliveries and have three loading areas, will exacerbate this problem. While existing residents suggest that large tractor trailers will not be able to access the property, they did not present evidence that moves would be handled by these larger vehicles. The same is true as to the proposition that the one-to-one ratio between parking spaces and dwelling units is insufficient. While those opposing the application expressed skepticism that people would not use parking garages, there is little in the way of quantifiable evidence to this effect.

In contrast, the Applicant presented expert testimony that those vehicles large enough to move furniture for the size of the units proposed will be able to unload and load in at least one of the loading bays or the lay-by (located on West Lane). The Applicant also took videos recording traffic volumes and vehicle deliveries occurring on sequential days. These videos did not record any congestion occurring on the street; the time attributable to vehicle deliveries averaged three minutes and there were an average of 4.67 deliveries per day. While the Planning

Board concluded that there were parking and congestion problems on Montgomery Lane, they did not have the benefit of the Applicant's summary of the video.

Based on this evidence, the Hearing Examiner finds that the Applicant has successfully met its burden of proof that site access and circulation will be safe, adequate and efficient.

#### **D. Preventing Erosion, Preserving Vegetation, Forest Conservation and Water Resources**

The fourth required finding is:

*That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

Mr. Irish testified that there were no significant natural features on the existing site except for one specimen tree. In addition, the development may impact the Critical Root Zone of a specimen tree on 4825 Montgomery Lane. In his opinion, the Applicant will be able to obtain a variance from the requirements of the Forest Conservation Law for removal of the tree on the subject property, and if the specimen tree on 4825 Montgomery Lane survives development on that site, will be able to obtain a variance for removal of that as well. He also testified at length as to how sediment and erosion control would be controlled on the site and the application is exempt from other requirements of the Forest Conservation Law. Having no evidence to the contrary, the Hearing Examiner finds that this requirement has been met.

#### **E. Ownership and Perpetual Maintenance**

The fifth required finding is:

*That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

The Applicant has submitted a deed and record of the Maryland State Department of Assessments and Taxation evidencing the Applicant's ownership of the site. Exhibit 7. It has also submitted a statement describing how the common areas and privately owned public use space will be maintained. Exhibit 18.

Having no evidence to the contrary, the Hearing Examiner finds that the applicant has sufficiently demonstrated both ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

#### **F. The Public Interest**

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities, the environment, and public benefits such as the provision of affordable housing and the location of residences near a Metro station.

The issue of Sector Plan conformance and adequacy of public facilities have already been discussed in this Report and the Planning Board has recommended approval of this application.

For the reasons discussed at length in this report, the Hearing Examiner concludes that the proposed development would be in the public interest.

#### **G. Conclusion**

Based on the foregoing analysis, and after a thorough review of the entire record, I reach the following conclusions:

1. The proposed development plan (Exhibit 127) satisfies the intent, purpose and standards of the TS-R Zone, and meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance;

2. The Local Map Amendment and Development Plan Amendment applications propose a project that would be compatible with development in the surrounding area; and
3. The requested reclassification to the TS-R Zone for Lot 26 and the right-of-way associated with Lots 24 and 25 has been shown to be in the public interest.

## VI. RECOMMENDATION

For the above reasons, I recommend that Zoning Application No. G-954, requesting reclassification from the R-60 Zone to the TS-R Zone of approximately 11,847 square feet of land known as 4901 Montgomery Lane, be approved. I further recommend that Development Plan Amendment 13-01 (Exhibit 127) also be approved provided that the applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

Dated July 15, 2013

Respectfully submitted,

Lynn A. Robeson

A handwritten signature in black ink, appearing to be 'Lynn A. Robeson', with a long horizontal flourish extending to the right.

Hearing Examiner

## **APPENDIX**

**January 11, 2013, Public Hearing**1. Ashley Gerstenfeld Wiltshire:

Ms. Wiltshire testified that she has been with SJG Properties, a family-owned company, for 40 years. In the recent decade, SJG has done approximately \$200 million worth of commercial and residential development, all of which have been in urban areas. SJG was the first to redevelop at Logan Circle with a commercial development and has done several residential rental and ownership developments in the area. T. 31-32. According to Ms. Wiltshire, SJG has also developed a \$60 million project converting class C office space into residential and retail near the White House. T. 32.

She stated that the subject property is currently improved with four single-family homes that are used for offices and a school. The school, located at 4903 Montgomery Lane, has nine employees and 50 students. 4901 Montgomery Lane is a small law office with five attorneys and between four to eight clients per day. She testified that 4833 West Lane consists of three separate businesses, with a combined total of 5 employees and 24 customers per day. According to Ms. Wiltshire, the last property, 4831 West Lane, has 7 professionals and 19 customers per day. She estimates that the total number of individuals working or visiting the site is between 118 to 122 each day. T. 35-36.

SJG is interested in developing the site because it is urban infill development at a desirable location, 950 feet from a Metro Station and a few blocks from downtown Bethesda. She understood the County's objectives for the site were to provide higher density, increased diversity in housing types and provide affordable housing units. T. 36-37.

SJG purchased Lots 24, 25, and 27 from the Holladay Corporation in December, 2009, because the approved project was economically infeasible. In September, 2011, SJG acquired Lot 26, in the southeast corner of the first three lots, which permitted them to development a more efficiently-designed building. T. 37.

According to Ms. Wiltshire, SJG considered the County's objectives for the site in comparison to the developments surrounding the property. She testified that the existing neighborhood consists of similar, large condominium units averaging between 1,700 and 2,000 square feet. SJG proposes units that range between 585 square feet and 1,200 square feet because it believes this is more consistent with the Bethesda Sector Plan. T. 38. SJG's average unit size, i.e., 860 square feet, in her opinion increases the diversity of housing types in the neighborhood. T. 38-39.

Ms. Wiltshire explained that the development may be economically infeasible if fewer than between 100 and 120 dwelling units are approved. Rental developments need more units because there are costs associated with the development that does not depend on the number of units, such as staffing. According to her, if the Council approves fewer than 120 units, development of a rental project would be economically infeasible and SJG would have to build a condominium development with larger units. T. 40. She stated that SJG has not committed to either a rental or ownership development, but they would like to keep their options open. T. 40-41. She feels that inclusion of 15% MPDUs is important because there are no existing MPDUs on Montgomery Lane. T. 41.



In Ms. Wiltshire's opinion, the 3.05 FAR density proposed is appropriate given the density of the project at 4901 Hampden Lane at the same height and density. T. 61. The design of the building has been influenced by meetings with the surrounding community and there have been a number of modifications which she believes have improved the compatibility of the development. T. 61-62. SJG set back the top two floors by nine feet. In addition, SJG moved the public use space from the northern portion on Hampden Lane to the Montgomery Lane frontage and setback the building 28 feet from the corner of Montgomery and West Lanes. They set the façade back as well. T. 62-63. This reduces the façade fronting Montgomery Lane by 30%. To address the parking concerns expressed at the Planning Board hearing, they added an additional loading bay at grade and additional space in the garage for as many as three trucks to park. T. 65. SJG is willing to agree to a binding element that requires all service trucks and deliveries to access the building through a service quarter.

On cross-examination, Ms. Wiltshire testified that there are differences between the operation of rental units and condominiums. When her company provides a rental project, they have an engineering team on staff, which reduces the number of service trucks and outside personnel visiting the property. She estimates that approximately 90% of service that has to be done within the building is done by the in-house engineering team. The use of parking is also significantly less in a rental building than in a condominium project. If the building were a condominium, each owner would call their own service contractor.

She acknowledged that SJG had not committed to a rental or condominium project, and therefore, the application should be reviewed from both possibilities. T. 70-71.

She also testified on cross-examination that SJG had done a feasibility study when it acquired the property. She believed that the prior developer purchased the property for approximately \$5 million. SJG paid \$3.3 million for the property in 2009, although they intended to wait to develop the property until they could acquire Lot 26, which they did in 2011. SJG purchased Lot 26 for \$2 million. She acknowledged that SJG paid approximately the same price for all parcels that Holladay paid for three parcels. T. 74.

She agreed that City Homes had presented the Applicant with revisions which they believed would make the project more compatible. T. 75. She believes that one of the requests may have been to reduce the height to 65 feet. T. 76. She does recall that one of the objections from City Homes was the lack of setback from Montgomery Lane as well as the location of the open space. T. 76-79. She was unsure whether these changes were made before or after the Planning Board hearing. She did not know how the nine-foot setback on the 6<sup>th</sup> and 7<sup>th</sup> floors came about.

She also agreed that the addition of Lot 26 increases the land area by approximately 40% from the property purchased by Holladay. T. 90. She acknowledged that increasing the density of Holladay's project by 40% would yield approximately 70 dwelling units, but stated that this project consisted of different types of dwelling units. T. 90.

On re-direct examination, Ms. Wiltshire testified that the development meets the parking requirements regardless of whether it is developed as a condominium or rental project because it provides three loading bays even though only one is required. T. 92.

2. Marius Radulescu:

The Applicant's expert architect answered multiple questions regarding preparation of several of the Applicant's exhibits. T. 48-57.

3. Mr. William Landfair:

Mr. Landfair qualified as an expert land planner. T. 94. He submitted a development plan that had been revised since the Planning Board hearing, which was prepared to address the concerns and issues raised at the hearing. T. 97. He described the revisions: the newer development plan moves the public use space from the north side of the building to Montgomery Lane to make it more accessible to the public. This has reduced the overall amount of green space on the site from 14% to 10%, but enabled the Applicant to create an area of approximately 600 square feet, similar to a pocket park. The Applicant used a concave arc on the southeast corner of the building to create the open area, vary the building façade, and reduce the amount of façade directly facing Montgomery Lane. The revised plan shifts the location of the loading area to the entrance of the garage at the northern corner of the building, which gave them more space to accommodate larger trucks. The loading area and the garage entrance were formerly separated; under the revised plan, they are immediately adjacent to each other. This creates more open space in front of the loading area which does not conflict with sidewalks. The setbacks of the portion of the building closest to Montgomery Lane remain the same. In addition, the Applicant eliminated a binding element (included in LMA G-843) which mandated that the garage door to underground parking be located underneath and within the building. Because the building is no longer designed in that manner, it was no longer necessary. There are additional indentations along the West Lane façade which provided for some additional open space along that road. The transformers remain in the original location; however, he stated that this should no longer be an issue because the Applicant is no longer counting the area as public use space. T. 101-108.

Mr. Landfair testified that the previous development plan did not reflect the architectural setback on the 5<sup>th</sup> floor because the plan only shows the ground plane. He stated that the 5<sup>th</sup> floor setback is not a binding element of the development plan. T. 107.

Mr. Landfair described the subject property and the surrounding area. Directly to the north is a parking garage with recreational facilities, both of which are associated with a High-Rise multi-family development, The Chase, which is located to the northeast of the property. To the northwest is a townhouse development zoned TS-R called “The Villages of Bethesda.” These townhomes are elevated an average of eight feet above grade. To the west are several properties which have been approved for a development in the TS-R Zone, known as the Edgemoor at Arlington North. The open space for the Edgemoor is located primarily along Arlington Road. To the southwest is a development known as Edgemoor at Arlington that is development with 21 dwelling units. Immediately to the south, confronting the subject property, is City Homes, a development of 29 townhomes in five rows located perpendicular to Montgomery Lane, which is also zoned TS-R. Confronting the subject property directly to the east is a property recently rezoned to the TS-R Zone by the Sandy Spring Builder’s Group (“Sandy Spring Building”), which will be developed as a four-story condominium building with four units. Further to the east along Montgomery Lane is an Edgemoor High-Rise building, which is approximately 100 feet in height. T. 108-111.

Mr. Landfair testified that the City Homes townhouses are 50 feet in height measured to the roof ridge and the southern-most units are adjacent to the property line. Once this project is developed, its building face will be 70 feet from the building faces of the City Homes townhouses. The Sandy Spring Building will be 65 feet high plus a four-foot parapet. T. 110.

The subject property is located within an area of the Sector Plan called the “Transit-Station Residential District.” Currently, the District is developed primarily with high- and mid-rise multi-family buildings as well as the townhouses described. Some properties still have single-family detached homes which pre-dated the Sector Plan and are used for commercial purposes. T. 111-112. The subject property is currently improved with four houses used for commercial purposes. T. 112. Mr. Landfair stated that Lot 26 is currently zoned R-60. Multi-family residences are a permitted use in the TS-R Zone. T. 113.

Mr. Landfair opined that the proposed development meets the intent of the TS-R Zone. The Zone is intended to be used in areas designated as transit station development areas in an approved master or sector plan. In this instance, the *1994 Sector Plan* designated the site for TS-R development. In addition, the property is also located 1,000 feet from the Bethesda Metro Station and is recommended for multi-family residential use. T. 113-114.

According to Mr. Landfair, the proposed development plan also meets the purposes of the TS-R Zone, as set forth in §59-C-8.22. Subparagraph (a) of that section states that a purpose of the TS-R Zone is to promote effective use of transit station development and access thereto. Another purpose, stated in subsection (b), is to provide residential and compatible non-residential uses within walking distance of a metro station. A further purpose (according to Mr. Landfair) is to provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the County. T. 113-115. The final purpose (contained in Subsection (d)) is to provide the maximum amount of freedom possible in the design of buildings and their groupings and layout within the area classified in the TS-R Zone, to promote the harmonious and systematic development of the area within the zone to prevent adverse impacts to the surrounding area. T. 115.

In his opinion, the development plan meets these purposes because the Applicant will contribute to improving Montgomery Lane and West Lane with the continuation of new streetscape and public use spaces. He believes that the project will contribute to different building densities, designs and styles that already exist in the transit station area because several recent TS-R developments have produced a relatively small number of units, although overall density will be approximately 66 dwelling units per acre. T. 114. He opined that the project complements the flexibility of design in the surrounding area because each project is unique in character and density. He believes, however, that the area lacks diversity in terms of unit size because all of the existing projects provide larger units. This project will bring needed density to the District by offering distinctive housing in smaller rental or condominium units along with MPDUs attractive to a broader range of economic levels. T. 116. The MPDUs in the project (up to 18 units) would constitute approximately 50% of the number of MPDUs provided in other units in the area. The MPDUs will be the first to be located on Montgomery Lane itself. T. 116.

Mr. Landfair presented an exhibit (Exhibit 53) that compares certain characteristics of the subject property and other developments in the surrounding area. These include the multi-family High-Rise Edgemoor development, the low-rise Edgemoor at Arlington North, and Hampden Lane Associates, located at the corner of Arlington and Hampden Lane. Exhibit 53 compares the total number of units, units per acre, land area, average unit size, and the total numbers of MPDUs that were provided with each of these projects. He acknowledged that, in some cases, the unit size listed in the plan approval is not binding. T. 119.

Mr. Landfair summarized the comparative characteristics shown on Exhibit 53. Without the project, the average number of units per acre is between 48 and 54 units; this will increase to between 57 and 66 units per acre with the project. The average size of units in the area will

decrease from between 2,120 and 2,230 square feet to between 1,950 and 2,100 square feet. In his opinion, the most important characteristic is that the number of MPDUs will increase from between 27 and 35 units without the project to between 42 and 53 units. T. 124.

Mr. Landfair opined that the project meets the intent of the TS-R Zone, articulated in §59-C-8.24 of the Zoning Ordinance, because it is located in a transit station development area as defined. In addition, the Sector Plan specifically designates this property for TS-R zoning. T. 124-125.

According to Mr. Landfair, the proposed development also meets the requirements of §59-C-8.25 of the Zoning Ordinance, which requires there to be facilities and amenities which substantially conform to the Sector Plan to ensure compatibility. The facilities and amenities provided will dedicate additional open space along Montgomery Lane and West Lane, an improved streetscape, and a new sidewalk along West Lane. T. 124.

A multi-family residential project is a permitted use in the TS-R Zone, thus meeting the requirements of §59-C-8.3 of the Zoning Ordinance. He has also determined that the development will meet the development standards of the TS-R Zone, set forth in §59-C-8.4 of the Zoning Ordinance. The TS-R Zone permits a maximum density of 2.5 FAR, with up to a 3.05 FAR if 15% of the units are MPDUs. In the TS-R Zone, the number of dwelling units is capped at 150 units per acre. While all of the units along Montgomery Lane are under or at 2.5 FAR, this is the only project which will have MPDUs. T. 125. Thus, the density of 135 dwelling units per acre is appropriate here. Density is a function of unit size; there may be more units in comparatively the same size building if they are smaller than the units in another building. T. 126.

In his opinion, from a land planning, housing, and smart growth policy perspective, the TS-R district is intended to capitalize on the location's proximity to the Metro Station, the Central Business District, and promote density in these locations. He believes it is significant that, when originally approved, the High-Rise Edgemoor was intended to have 102 units; subsequently, the size of the individual units was doubled, reducing the final total to 54 units. T. 126.

The TS-R Zone does not have a maximum building height; these are determined by the Planning Board at site plan review. In approving a particular height, the Board must consider the lot size, the building's relationship with other uses, the need to preserve light and air, and the compatibility of the building with surrounding uses. T. 126. The Sector Plan recommends a 65-foot height limit for the subject property, although the Plan also contains an objective for low-rise high-density residential development. Thus, the Plan recommends heights ranging between 35 feet and 200 feet. In this context, Mr. Landfair believes that 65 feet is low-rise. T. 126. In his opinion, there is a strong justification in the Sector Plan for heights up to 75 feet as being considered low-rise, with heights ranging from 90 to 125 as mid-rise, and High-Rise consisting of up to 200 feet. Because this building will be a maximum of 70 feet high and will step down to 50 feet as it approaches Montgomery Lane, he believes it is in substantial compliance with the recommendations of the Sector Plan. T. 128. He also believes that the 70-foot height is consistent with the area because there are many examples throughout the CBD of variations from the Sector Plan's height recommendations. These include the Hilton Garden Inn, approved for 116 feet although the Sector Plan recommended 90 feet, a project called "Upstairs at Bethesda Row," supported at 42 feet while the Sector Plan recommended 65 feet, and 4901 Hampden Lane, recommended for 65 feet in the Sector Plan but approved at 70 feet. T. 128. The proposed height of 70 feet is also permitted by the Zoning Ordinance, which permits an increase in

maximum densities and heights in order to accommodate bonus densities for providing 15% of the units as MPDUs. T. 128.

**January 15, 2013, Public Hearing**

This public hearing was reserved for scheduling matters pending review of the amended development plan by the Planning Board. The hearing was continued for April 8, 2013, to afford the Planning Board an opportunity to review the amendments.

**April 8, 2013, Public Hearing**

1. William Landfair:

Mr. Landair testified that the transformers will be above-ground under the revised development plan, but will have a landscaped screen.

He further testified that the Zoning Ordinance permits a maximum of 3.05 FAR or 183 dwelling units per acre if the development designates 15% of the dwelling units as MDPU. Although the Sector Plan itself permits a 2.5 FAR and 65-foot height limit, he believes that it permits a 3.05 FAR and 70-foot height limit for MPDU bonus density. He testified that the revised plan step backs the height by 12 feet beginning with the 6<sup>th</sup> floor, rather than the 9-foot step back in the original plan. T. 26.

Mr. Landfair described the subject property and the surrounding area. Located on the northwest corner of West Lane and Montgomery Lane, the Chase at Edgemoor, which is approximately 100 feet in height is immediately to the east. Immediately to the north of that, an existing project called the "Chase at Bethesda II" was developed pursuant to the TSR Zone and is 120 feet high. To the south of that is the "Edgemoor High-Rise" which is 100 feet high with an FAR of 6.05. South of the High-Rise Edgemoor is an approved project but as yet unbuilt development at 4901 Hampden Lane that is 70 feet high with a 3.05 FAR. To the West, on the south side of Montgomery Lane, are the City Homes townhouses. These are approximately 53 feet high with an FAR of 1.8.

Another approved but unbuilt development is located at the northeast corner of the intersection of Hampden Lane and Arlington Road. This project will be 70 feet high with a 1.8 FAR. North of that project, along Arlington Road, is 4825, which was approved at 65 feet with a 2.5 FAR. T. 26-28.

Mr. Landfair described the relationship between the north and south sides of Montgomery Lane. The building faces of the Edgemoor High-Rise and City Homes townhouses are approximately 71 feet apart. The building faces of 4825 Montgomery Lane and City Homes are approximately 66 feet apart. According to him, the 73 feet separating the building faces of the proposed development and City Homes is the largest along Montgomery Lane. T. 30.

He also presented perspectives showing the relative height between the buildings on Montgomery Lane. The Edgemoor High-Rise is 100 feet in height, 4825 Montgomery Lane is 65 feet high, the proposed development is 70 feet in height, but steps back an additional 12 feet at 50 feet high. The step back on the proposed building is at approximately the same height as the roves of the City Homes townhouses. T. 32.

Mr. Landfair compared the heights of the buildings in the surrounding area with the heights recommended in the Sector Plan. The Sector Plan recommends heights of 35 feet along Arlington Road scaling up to 65 feet along Woodmont Avenue. The Villages of Bethesda is partially located within the area recommended for 35 foot heights, but was building with a height of 42 feet. South of that, the Edgemoor at Arlington North has been approved at 48 feet. The Edgemoor at Arlington, directly south, was built at 46 feet. The Hampden Lane project, located in the northeast quadrant of the intersection of Arlington Road and Hampden Lane, has been approved at a height of 71 feet. While this building steps back from Arlington Road, the highest portion of the building is 71 feet. T. 34-35. Part of the 71-foot portion of the building extends into the area recommended for 35 feet. The project known as 4901 Hampden Lane has a building height of 70 feet, which exceeds the 65 feet recommended in the Sector Plan. T. 37.

Mr. Landfair testified that a consistent street edge or building line is important to achieve an attractive and lively pedestrian linkage. In his opinion, this is so important that planners will use a wall or colonnades to create a continuous street line even where there are no buildings. According to him, this is being recognized in new zones, such as the CR Zone, that have recently been adopted by the County. In these zones, the amount of public use space has been reduced to eliminate dead spaces that might exist in front of the buildings. T. 38-39.

Mr. Landfair opined that a defined streetscape is important because it creates a more comfortable walking experience. If important elements like the width of the pavement or the curve radii around the corner are not defined, walking is less comfortable. Other factors that may define the streetscape include on-street parking, pavement materials, street trees and furnishings, and lighting, all of which contribute to a walkable experience. T. 39.

According to Mr. Landfair, striking a balance between the pedestrian and vehicular environments is also important in achieving a walkable street. He opined that an ideal balance is 50% pedestrian and 50% vehicular. The more pedestrian environment provided is better. T. 39.

The proposed development plan shows approximately 26 feet of streetscape along Montgomery Lane. When this is combined with the 27-foot streetscape in front of City Homes directly south, there is a total of 53 feet of pedestrian environment compared to 21 feet of roadway. In his opinion, that contributes to a very vital pedestrian experience for people walking along Montgomery Lane. T. 40.

He further opined that a walkable street requires a sense of transparency or the ability to see and focus beyond the edges. While this is difficult to achieve, he believes that the 5<sup>th</sup> floor step back and the pocket park at Montgomery and West Lanes achieve that sense of transparency.

Mr. Landfair stated that it is important to maintain a “human scale” along the street. The street should be “visually rich” with a variety of buildings, colors, textures, materials and landscaping. In his opinion, the proposed development contributes to maintaining a human scale along Montgomery Lane. T. 40.

Mr. Landfair opined that the development will fulfill the urban design guidelines of the Sector Plan. The project will concentrate development within the TS-R District. According to him, the development creates a compatible transition from the east to the west, with the higher heights near the Metro core scaling to lower heights along Arlington Road. T. 41. This is important to maintain compatibility with the single-family homes west of Arlington Road.

Mr. Landfair believes that incorporating Lot 26 into this development plan also furthers the Sector Plan's goal to avoid isolating single parcels. This also enables the Applicant to provide usable, viable public use space and improve the pedestrian network for the area. T. 42.

He further testified that the development will further goals of the Housing Element of the General Plan adopted by the Council in March, 2011. The goal of the Housing Element is to provide housing in the County for seniors, for the disabled, MPDUs and affordable housing. T. 43. The development fulfills two of the goals and three of the objectives. The development meets the goals because it provides housing concentrated in a mixed use transit-oriented area and the opportunity for rental housing, therefore adding a different housing type of the area. T. 44-45.

The development fulfills the objectives of the Housing Element to (1) add new housing in mixed-use transit oriented areas near employment, (2) create smaller, more energy efficient units (because the building will be LEED certified), and (3) fulfilling the neighborhood design identified in the Element. In his opinion, the development will contribute to a very pedestrian-friendly network. T. 46.

Mr. Landfair opined that the binding elements incorporated into the development plan enhance the compatibility of the project with the surrounding area. T. 46-47. They bind the Applicant to the setbacks and include architectural detail such setting a minimum percentage of glazed area, building façade treatments, lighting, and include the step back beginning on the 6<sup>th</sup> floor. T. 46.

According to Mr. Landfair, the proposed development will further the public interest because it substantially conforms with the recommendations of the Sector Plan. The Plan recommends the property for the TS-R Zone and consolidates rather than isolates residentially zoned parcels. The multi-family units will be close to Metro and will include MPDU units. Nor will the project have an adverse impact on public facilities. The Applicant believes the development will attract primarily young professionals, and so will not add a significant number of students to the school system. T. 48. A recent task force established by the County Executive is seeking to find ways to attract a younger population to the County and this is consistent with that goal. T. 48-49.

He opined that the unit size proposed averages approximately 860 square feet, much smaller than other buildings in the surrounding area. This is important because the existing density in the TS-R District is only approximately 53-56 dwelling units per acre, much less than was envisioned in the Sector Plan for an area so close to Metro. The development will nearly double the number of MPDUs in the area. T. 50.

Mr. Landfair summarized the comments of the Planning Board and Technical Staff, both of whom recommended approval of the project. According to him, the planning staff found that the revised plan responded to the Planning Board's prior concerns relating to the public use space. When located at the north end of Montgomery Lane, the Planning Board found that few would use the space. The Board felt that relocating the public use space to the corner at the intersection of West and Montgomery Lanes created space that would actually be used by the public. The Board also determined that it helps to break up the façade, reducing the length of the building façade along Montgomery Lane. The Board also felt that increasing the step back beginning on the 6<sup>th</sup> floor was helpful to reduce the overall mass of the building as viewed from Montgomery Lane. It felt that the 12-foot setback along the western boundary was sufficient to



be compatible with the Edgemoor at Arlington North. The Board's recommendation for approval was unanimous. T. 52.

Mr. Landfair opined that the development will meet the Sector Plan's goals because it locates residential density near the Bethesda core, provides affordable housing through MPDUs, and satisfies a market demand for smaller, more affordable units in the area. The density also comports with the recommendations of the Sector Plan, and the Applicant feels this will establish an appropriate transition from the Bethesda core to the single-family residential neighborhoods across Arlington Road. T. 54-55.

He opined that the development will be compatible with the adjacent properties and the surrounding area. The pocket park and streetscape enhancements will significantly improve the pedestrian network along Montgomery and West Lanes. They believe that the architecture will mitigate the building's mass from Montgomery Lane. T. 56.

Mr. Landfair answered several questions regarding DPA Exhibit 60, comparing the proposed project with other developments in the surrounding area. He acknowledged that, even though Exhibit 60 stated that the City Homes townhouses did not have first floor entrances, one may enter the units from the garages located on the first floor. T. 42-46.

He also answered several questions regarding the reduced amount of public use space provided in the revised plan. Prior to the amendment (adding the pocket park along Montgomery Lane), the public use space included the 10-foot frontage along Montgomery Lane and space on the north end of the property. In the amended development plan, the pocket park is approximately 1,000 square feet (including the street frontage previously counted as public use space). The public use space for the project now runs along Montgomery and West Lanes. T. 46-52. The area along the northern property line (formerly proposed to be public use space) will be private amenity area with hardscape and landscaping. T. 52. In his opinion, this opens an opportunity to connect the Edgemoor at Arlington North and the subject property with a rear alley. T. 52-53. Before the addition of the pocket park, approximately 1/2 of the public use space was located along the northern boundary where the private amenity space is now shown. T. 53.

Mr. Landfair could not explain why the public use space had decreased from 4,092 square feet to approximately 2,841 square feet. T. 68. He noted that, while the amount of public use space had decreased, it could be that the overall open space (including both public use and private amenity spaces) had increased. T. 55-56. He did not know whether the public would be invited to use the private amenity space. T. 56. He was unsure whether the private amenity space included the transformers located on the north side of the property, as had been the case in the prior plan. T. 65. The rear setback of 15 feet had not changed from the former project. T. 67. He stated that the pocket park consisted of approximately 600 square feet, net of the 10-foot setback from the former development plan. T. 70. The West Lane frontage is approximately the same, although building cut-outs have added to the public use space. T. 73.

He testified that the 10-foot wide public use space in front of the building will be a mixture of landscape and hardscape. Hardscape includes pavers and possibly benches. T. 56-60. He acknowledged that County regulations impose spacing requirements for street trees to prevent overcrowding. T. 61. He felt that 10-foot spacing would be tight for street trees.

In Mr. Landfair's opinion, the public use space provided in the current plan is more effective than in the prior plan despite its reduced size. T. 69. He did not agree that increasing the building setback along Montgomery Lane would make the project more compatible because it "creates a less welcoming pedestrian environment." T. 74. He opined that it is better to have a

“continuous wall” to help define the enclosure. *Id.* According to him, Technical Staff refused to approve an increased setback from Montgomery Lane for the 4825 Montgomery Lane building, although he did acknowledge that Staff approved a 15-foot front setback for the Holladay Project. T. 84. The Applicant here feels that increasing the Montgomery Lane setback does nothing for compatibility and compromises the amenity space and possibility for an alley on the north side of the building. T. 74-75.

He acknowledged that the amended plan did not make significant changes to the east, north or south sides of the property, but decreased the side setback on the western edge from 15 to 12 feet. T. 76. In his opinion, most pedestrians don’t perceive a difference of one or two feet of setback space. The 15-foot originally approved for the Holladay Project would not, in his opinion, substantially improve the public use space. T. 80-81.

He stated that any increase to the front setback would affect the 15-foot rear setback from the Villages of Bethesda, which he opined is necessary for compatibility with that project. T. 83. He also acknowledged that the 15-foot setback for the Holladay Project extended along the four-story building element along Montgomery Lane. He acknowledged that the step back along the fifth floor was substantial and extended to the mid-point of the building. T. 85.

Mr. Landfair responded to many questions regarding the compatibility of the development with the surrounding area. He acknowledged that an applicant may comply with all the requirements for a development plan and still not be compatible with the surrounding area. T. 88. He also agreed that the MPDU bonuses for height and density did not supersede the requirement that the development be compatible with nearby uses. T. 89.

In Mr. Landfair’s opinion, the elements of compatible development include use, density, height, bulk, massing and setbacks. He agreed that Master Plan recommendations are promulgated to evaluate compatibility with the surrounding area and set the “base line” by which to measure the project. T. 89-90. He agreed that the District Council found that the existing and approved developments within the area were compatible with the neighborhood and complied with the Sector Plan. T. 91. Mr. Landfair agreed that the proposed development had the highest FAR and height of the buildings immediately adjacent.

He conceded that the Holladay Project could be used as a baseline for compatibility with the neighborhood. T. 92. When compared with that approval, this development had (1) 2-3 times the number of units, (2) a 3.05 rather than a 2.5 FAR, (3) a density of approximately 130 dwelling units per acre rather than 73 dwelling units per acre; (4) 7 stories in height with a 12-foot step back at the 6<sup>th</sup> floor opposed to a 6-story building with a step back extending to the mid-point of the roof beginning at the 5<sup>th</sup> floor; (5) 123 parking spaces versus the 78 parking spaces provided in the Holladay Project, and (6) a 10-foot rather than 15-foot setback from Montgomery Lane. T. 92-96.

Despite this, Mr. Landfair opined that the difference in the density of the two projects is comparing apples and oranges because the Holladay Project did not incorporate the additional lot (Lot 26) as does the proposed development. T. 96. In his opinion, compatibility is not necessarily determined by the interior elements of the building, such as the number of units. In this case, the number of units is a reflection of the MPDUs. Rather, he observed that one should look at exterior elements such as height, setbacks, and public use space. He conceded that the Applicant could voluntarily provide more MPDUs without taking bonus density, but noted that MPDUs are expensive to construct. T. 96-97. He also acknowledged that height and density are the only explicitly permitted deviations from the Sector Plan due to providing MPDUs. T. 98.

He testified that whether an additional setback in front of the building generates additional compatibility is a matter of design. The Applicant is proposing a substantial amount of public use space in front of the building compared to other buildings along Montgomery Lane. T. 101. It is also substantial because of its design, and will include hardscape and streetscape. T. 103.

Mr. Landfair was asked several questions regarding whether the project complies with the urban design guidelines for the TS-R District expressed in the Sector Plan. With regard to the recommendation that buildings transition in height from Woodmont Avenue to Arlington Road, he stated that the Edgemoor High-Rise is 100 feet high and 4825 Montgomery Lane is 65 feet high. He also agreed that some of the buildings, such as Hampden Lane, transition in height within the building from north to south. T. 102-104. He conceded that the project does not transition in a straight line from Woodmont Avenue to Arlington Road because it is higher than 4825 Montgomery Lane, but pointed out that it is well within a straight line transition beginning at the Metro Core. T. 104-105.

With regard to the Sector Plan's guideline to divide large projects into single buildings to achieve a "fine grain" versus a "course grain" urban form, Mr. Landfair testified that this is achieved through substantial setbacks from all four sides. He pointed out that not all TS-R buildings have this. In his opinion, setbacks mitigate most of the building's mass. He believes that the size, footprint, and massing meets this goal. T. 106. A 12-foot setback entirely around the building could reduce the FAR to 2.5, he did not believe it would increase compatibility. T. 107.

Another urban design guideline is to treat rooftops as sculptural elements. Mr. Landfair testified that the step back achieves this, although he acknowledged that the building will have a flat roof with a penthouse for mechanical equipment. He believes that the roof may have other active and passive recreational elements, although these are not yet designed. T. 107.

With regard to the Sector Plan's designation of Montgomery Lane as a "mixed street," he testified that there were two such designations within the Sector Plan. In addition to Montgomery Lane, Fairmont Avenue in the Woodmont Triangle is a mixed street. He acknowledged that Fairmont Avenue is in a much more intensely developed area and is surrounded by CBD zoning. T. 107-108.

He was also queried about whether the project complies with the density recommended in the Sector Plan, and specifically, the Plan's recommendation that developments provide the "full" density of 2.5 FAR. In his opinion, Technical Staff found that 2.5 FAR was appropriate for this transitional area, designated as a high density, low-rise residential district. Staff wanted to reinforce this density concept. T. 109. He agreed that, as the expert land planner for the Holladay Project, he had stated that the 6-story height was "strictly consistent" with the Sector Plan. He conceded that this project was a "very different" building than the Holladay building, but disagreed that this means the proposed development is not compatible. T. 113-114.

He also acknowledged that in LMA G-843 (the Holladay Project), he had described 2.5 as being the "full" FAR recommended by the Sector Plan, although he stressed that the Holladay Project had not provided MPDUs as this one does. T. 118.

He agreed that the Sector Plan recommends that buildings have individual entrances on the street and conceded that the proposed development does not incorporate this guideline. T. 119.

He disagreed that the Council's approval of projects with fewer MPDUs and less density established the character of the surrounding area, although later he agreed that it might do so. T. 124-125.

He further testified that housing diversity may be achieved in several ways. These include providing MPDUs and the fact that these may be rental units, although he acknowledged that this is not a binding element. In addition, these units will be smaller to accommodate MPDUs, although again, the size of the units is not a binding element. T. 127-129. He testified that smaller units could be a basis for approving the rezoning even though they are not a binding element. T. 130-131. He agreed that the density may be considerable less than 120 dwelling units if they are larger and that all projects would provide MPDUs. He believes, however, that architectural elements and lighting create diversity in the unit types and contribute to the public interest. T. 133.

Mr. Landfair acknowledged that the amount of public use space is only the minimum required to be provided. There will be landscaping along the edges of the plaza, flat roofs, vehicle access, and underground parking. The landscaping along the street is dictated by Planning Board guidelines, but they still have binding elements related to the private outdoor amenity area. T. 135-136. According to him, the elevations do not picture everything that's going to be within the landscaped area. T. 137.

Mr. Landfair conceded that the Applicant has not included all of the binding elements recommended by the Planning Board. Among those not included was a binding element requiring bay windows along Montgomery Lane. In response to a question asking the meaning of the binding element requiring a pocket park which will "substantially conform" to that shown on the development plan, Mr. Landfair stated that the Applicant is committed to providing that public use space. T. 139. In his opinion, the pocket park will not hinder access for individuals with disabilities because there is a ramp to the side entrance along West Lane. He conceded, however, that disabled visitors would have to use the same lay-by used by delivery trucks. T. 140.

Mr. Landfair confirmed that deliveries will not occur through the front entrance, although he did not know how management would enforce that requirement. He believes that delivery drivers will use the West Lane lay-by rather than parking on the street. When questioned why a driver would want to park in a place pointing the wrong direction (i.e., pointing north on West Lane), he replied that it is a simple 3-point turn for a panel truck to pull up, back into the garage entrance, turn and come back. He acknowledged, however, that there may at times be conflicts with vehicles accessing the garages at 4825 Montgomery Lane. T. 150-156. He disagreed that it is likely that drivers will park on West Lane if the lay-by is occupied; in his opinion, they would probably pull further north on West Lane closest to the door to which they may deliver packages. T. 157-158.

According to Mr. Landfair, the lay-by on West Lane may accommodate 1 panel truck or two cars. An additional loading bay is located adjacent to the garage entrance and a smaller loading zone inside the garage. T. 158. The bay adjacent to the garage entrance will hold one small panel truck, which he described as a 30-foot truck similar to UPS trucks. The garage loading space may accommodate a small moving truck similar to a cargo van, but smaller than a panel truck. That space is designed for temporary loading and not service or repair trucks. T. 159. He believes the project will provide the maximum safety and efficiency; the development plan has been reviewed by the County Department of Transportation. According to him, DOT

was pleased with the loading bay directly on the street as well as the lay-by on West Lane. T. 160.

Mr. Landfair also testified on the relationship of the proposed building with the Edgemoor at Arlington North. The latter building is 48 feet high along the subject property's western boundary. It is separated by a 12-foot setback on the subject property and a driveway on the Edgemoor property that is at least 20 feet in width. In his opinion, a 42-foot separation between the buildings is more than sufficient for light and air. The TS-R Zone does not require any setback—the 3-foot difference in the setback between the prior plan and the current plan is insignificant and does not affect compatibility. T. 168. He acknowledged that there may be a wall or fence along the driveway servicing the Edgemoor at Arlington North, but it will not be visible to lower floor residents of the proposed development because of the difference in grade. T. 169.

Mr. Landfair described the street frontage along Montgomery Lane as well. Twenty-six feet separate the building face from the edge of the curb. The sidewalk will be a minimum of 5 feet, although the design has not been finalized. A grass panel and street trees will separate the sidewalk from the curb. The grass panel will be roughly 5-feet wide. Of the 26 feet, 10 feet will constitute the project's public use space and 16 feet will be within the right-of-way. T. 170-172.

He described the Montgomery Lane street frontage along the Edgemoor High-Rise, which has several different measurements. Sixteen feet separate the building face from two lay-bys. In addition, steps lead from the entrance to the lay-by. Approximately eight feet separate the edge of the steps and the lay-by. Thus, eight feet is the effective width of the sidewalk in front of the Edgemoor High-Rise. T. 173. There are about nine feet separating the building face from the sidewalk. T. 174. In his opinion, adding an additional three feet in front of the Edgemoor High-Rise would make a difference—the Edgemoor is a very tall building and feels very close to pedestrians. T. 175.

Mr. Landfair acknowledged that the rooftop structure depicted in an aerial view (Exhibit 106(f)) of 4825 Montgomery Lane appeared smaller and was located further from the street. The same structure on the Edgemoor at Arlington North also appeared smaller. The Edgemoor High-Rise has rooftop structures to the rear and center part of the building which are screened from Montgomery Lane by the pitched roof. T. 177. He testified that pedestrians walking on the south side of Montgomery Lane may see the upper end of the 6<sup>th</sup> and 7<sup>th</sup> floors, but would focus on the first five floors. T. 177. One looking from an angle further east along the street one would have a clearer view of the upper floor, but not if you are directly opposite. T. 178. A pedestrian walking along the south side of Montgomery Lane coming from Arlington Road would also have a clear view of the 6<sup>th</sup> and 7<sup>th</sup> floors, although he was not sure whether the penthouse could be seen. T. 178-179. He did not believe that the ground elevation would affect a pedestrian's perception of the height of the building, because everything would appear higher. T. 179.

He stated that there were units on the Edgemoor High-Rise that face west and possibly could see the proposed development, but thought their view would probably be obstructed by 4825 Montgomery Lane. Even though the Edgemoor is 100-feet high and 4825 Montgomery Lane is 65 feet high, he believes the sight angle and distance between the two buildings may obscure the view. T. 181.

He testified that he determined that the City Homes townhouses were 53-feet high by his firm's own survey, even though the Staff Report stated the townhomes are 48 feet high. He felt

it possible that Staff measured to the eave of the roof rather than to the peak. He agreed that the townhouses presented less mass than the proposed development because the peaked roofs fall away. T. 183.

He agreed that the City Homes townhouses constitute the majority of the street frontage on the south side of Montgomery Lane. He also conceded that the orientation of the townhouses perpendicular to Montgomery Lane lessens reduces the mass of those buildings. He agreed that the impression of their building would be different than the impression one had of the City Homes townhouses.

He testified that the length of the building face of the proposed development from its western edge to the eastern edge at the point it begins to scallop is 79 feet. T. 185. He believes that the impression of building mass will be different than if the building extended in a solid line to the eastern corner. Were the building to continue straight to the corner, the Montgomery Lane frontage would be another 28 feet in length. T. 186.

Mr. Landfair measured the Montgomery Lane frontage of the City Homes townhouses. They are approximately 38 feet in width and are separated by 30-foot wide alleys. Mr. Landfair testified that the HOC building on Hampden Lane has balconies that mark it as a residential building. T. 189. The balconies were not included on the aerial photograph of the area because it hadn't been updated. They inserted it as best they could. T. 190.

Mr. Landfair testified regarding the elevations showing the architectural styles of the surrounding buildings. He conceded that the Council resolution depicting 4901 Hampden Lane showed a much different architectural style than shown on the Applicant's Exhibit 106(g). He agreed that it had much less glass; he characterized the architecture as "more traditional." T. 206-207. He also acknowledged the Council resolution showed a rooftop terrace on the corner of the building that was not shown on the Applicant's exhibit. He acknowledged that balconies, gables, mullioned windows, and peaked roofs are normally associated with residential buildings. The Edgemoor High-Rise displays these features. He testified that the building façade of the proposed development does display articulation along West Lane, the scalloped area, and the roof step back, although the façade is more contemporary. He acknowledged that the urban design guidelines recommend treating rooftops as sculptural elements, although none will be provided here. The Applicant may have a passive recreational amenity on the roof, but that has not been designed at this stage. T. 214-217. He opined that the scallop along West Lane is an architectural element that fulfills the Sector Plan's recommendation to incorporate these elements to reduce mass. T. 218-219. While agreeing that the building does not meet the Sector Plan's recommendation to achieve a residential image through the use of hip roofs, gables, turrets, etc., he pointed out that the illustration of Montgomery Lane on page 84 of the Sector Plan does show some flat roofs. T. 219-220. He testified that it was his belief that the Council desired as many MPDUs in the area as possible. He was unaware of a recent Council decision to permit a decrease in the number of units within 4901 Hampden Lane.

Mr. Landfair confirmed that the buildings to the east across Woodmont Avenue were commercial and were supposed to be as high as 200 square feet. He also agreed that heights were to step down on the west side of Woodmont Avenue until heights lower to 35 feet along Arlington Road, known as the "tenting concept." Originally, the building at 4901 Hampden Lane was proposed at 100 feet. The Council found that too high and rejected that proposal, even though existing buildings on the east side of Woodmont are between 160-180 feet. The Council later approved a building at 4901 Hampden Lane with a height of 70 feet. Mr. Landfair stated that he was not considering that project when opining that the proposed development is

compatible with the neighborhood. T. 227. He was not aware that the 4901 Hampden Lane building had an element along Montgomery Lane that stepped down to 60 feet. He was not aware of the reasons for the Council's decision to reduce the height of that building. T. 227.-228. He is unsure, however, whether one may conclude that approval of a reduction in the minimum number of units meant that the Council does not desire to avoid other requirements of the Sector Plan simply to gain more MPDUs. T. 228-229. He did not know enough of the background of the Council's approval to make further conclusion about that case. T. 230.

Mr. Landfair acknowledged that the Council had found that the density of the Holladay development formerly approved for a portion of the site (i.e., 27 dwelling units per acre) was compatible with the area and consistent with the Sector Plan. He did not agree that approval of the Holladay Project meant that this project was incompatible with the surrounding area because this project involves more land area. T. 232-233. He was aware that the Edgemoor High-Rise was approved in conjunction with City Homes, but disagreed with the Hearing Examiner that the 100-foot height conformed with the Sector Plan. T. 235. The building referenced by the Hearing Examiner in support of the Edgemoor approval was the Chase building, immediately north of the Edgemoor High-Rise. The Chase was built prior to the Sector Plan, which first established the concept of a high density, low-rise urban village. T. 236.

He agreed that the architecture of 4825 Montgomery Lane is more traditional, but pointed out that there were some buildings with modern designs in the surrounding area.

On re-direct examination, Mr. Landfair testified that the Council concluded that the Hampden Lane building (at the corner of Arlington Road and Hampden Lane) was compatible with the surrounding buildings, including City Homes. That building is 71 feet in height and has no setback from City Homes. It will be built on the property line. T. 240-241. A distance of 12 feet separates City Homes from the HOC building. T. 242. The Council also found 4901 Hampden Lane and the Edgemoor at Arlington compatible with City Homes, which are 70 and 48 feet in height, respectively. T. 243. In his opinion, the proposed development is compatible with the surrounding neighborhood given that developments with zero setbacks and similar heights were also found compatible. T. 242-243.

The distance between the subject buildings and City Homes is 73 feet, according to Mr. Landfair. T. 243. He opined that increasing the distance between the two would not mitigate the impacts of the Hampden Lane building on City Homes. T. 244. Only approximately 10 feet of the rooftop of the Edgemoor at Arlington North is 35 feet high; the balance is 48 feet. T. 245. Both the Edgemoor at Arlington North and the Edgemoor at Arlington and the Hampden Lane projects all have upper-story step backs from Arlington Road. All of them have maximum heights which exceed the height recommendation in the Sector Plan. The two Edgemoor projects exceed the height limit by approximately 33 percent; a portion of the Hampden Lane building reaches 70 feet in the area recommended for 35 feet. T. 247. Neither 4825 Montgomery Lane, the High-Rise Edgemoor nor City Homes have any step back, although the subject property will have a step back. T. 247.

Mr. Landfair identified the building height measuring point for different buildings in the area. The measuring point for the Edgemoor High-Rise is located at the podium level fronting Montgomery Lane. The height of the Edgemoor at Arlington was measured from the curb at approximately the middle of the building. The Edgemoor at Arlington North was measured from the podium level as well. In his opinion, these points were used to measure the height because it was advantageous to do so. The measuring point for the Hampden Lane building is located along Hampden Lane, allowing the owner to achieve a higher height than were it located along



Arlington Road (because the elevation rises heading from Arlington Road proceeding east). T. 248-249. In his experience, it is common for developers to use the most advantageous measuring point to achieve more height for the building. T. 249.

Mr. Landfair clarified the elevation of the building's measuring point in relation to the highest elevation along Montgomery Lane after reviewing the survey upon which the development plan is based. He testified that the difference is two feet less than his prior testimony. T. 250-252. Therefore, the building height (above sea level) is actually two feet less, leading him to conclude that the measuring point is within the range (and possibly less) of the measuring point for the other buildings. T. 252.

Mr. Landfair testified that if the measuring point for a building's height is higher than the elevation where a pedestrian is standing, the building may look slightly higher than its stated height. According to him, there is no Zoning Ordinance regulation that requires the upper stories of a building to be invisible. T. 254-256. In his opinion, the upper floors do not have to be invisible to be compatible because of the distance between City Homes and the subject building. T. 257. He opined that it is unrealistic for those living in an urban environment within the Bethesda CBD not to expect to see a building out their window. T. 257.

He further opined that existing development along Montgomery Lane is consistent with the tenting concept employed by the Sector Plan because the tent begins at the highest point at the Bethesda Core and continues downward until Arlington Road. T. 259. He did not know of any regulation requiring each building to be lower than the building closer to the Core. T. 260. He stated that the 71-foot Hampden Lane project, immediately to the east of the 53-foot City Homes townhouses and the 50-foot HOC Building, does not fully respect the tenting concept. T. 261. In his opinion, this project still fulfills the goal of the Sector Plan because strict compliance is not necessary; the expectation is that there may be some anomalies that occur when actual projects come through. In his opinion, the tenting concept is one of the more flexible standards. T. 262. Nor, in his opinion, is there a requirement that the building step down from east to west to meet the tenting requirement. The Holladay building stepped down from north to south rather than east to west. T. 263. He opined that the Sector Plan deemed 65 feet to be a "low-rise" residential building. The additional 5 feet proposed here does not change that analysis. T. 264. Other projects within the area designated for "low-rise" development are 70 feet high, including the Hampden Lane building and 4901 Hampden Lane. These heights do not include mechanical penthouses located on the roof. T. 264-265.

The Council approved a total of 148 or 149 dwelling units for the Edgemoor High-Rise building, although only 54 were actually constructed. According to Mr. Landfair, the project was approved partially because it could provide 150 units close to the Metro station. It was consolidated with the City Homes and HOC approvals. He did not know why all of the projects were consolidated. T. 267. He opined that the Edgemoor High-Rise is low-density (even though it has a 6.0 FAR) because the number of units decreased to approximately 52. He speculated that the Planning Board was probably disappointed when the High-Rise ended up housing so few units that close to the Metro. T. 268-269. While it is above the minimum number of dwelling units per acre, it is also well below the maximum permitted by the TS-R Zone. T. 269-270.

He opined that the City Homes townhouses did not comply with the urban design guidelines in the Sector Plan for several reasons. Mr. Landfair characterized the urban design guidelines as "flexible standards" that do not require substantial conformance with the Sector Plan (as opposed to land use and density). T. 274. The Sector Plan intended buildings to look like 3-6 story townhouses, but with individual apartments on each floor. The Sector Plan also

recommended that parking be underground or in rear decks. The parking for City Homes is located within ground level garages accessed from alleys running perpendicular to the street and is readily visible from the street. T. 271. Residents of the proposed development will see to the end of the alleys and face two of the endcap units.

According to Mr. Landfair, the design of the City Homes townhouses does not meet the Sector Plan's recommendation to locate front entrances on the first floor. He opined that the purpose of the recommendation is to activate the street. While the end cap units have direct access to the street, access is provided by very large stairways which encroach into the streetscape. Thus, when passing, a pedestrian will feel the environment is private rather than public space. T. 273.

Mr. Landfair also described the impact of the amendment to the development plan on green area within the project. According to him, the overall green area did not decrease when the scalloped corner was incorporated into the Plan. The development plan retains the area on the northern boundary as green area, although now it is classified as private amenity area rather than public use space. He testified that overall, landscaped and hardscaped area has increased. T. 274.

He compared the public use space between the original and amended plans from both a qualitative and quantitative perspective. Typically, TS-R projects locate public use space along the street frontage for a variety of reasons. This is more successful in some cases than others. For instance, much of the Edgemoor High Rise's public space is along the Montgomery Lane frontage. There are handicapped ramps and a transformer within that area and some of the area goes to the side of the building. He opined that the quality of the public use space there is "debatable." T. 278.

The site of 4825 Montgomery Lane is very constrained, according to Mr. Landfair. To achieve the required public use space, the project counted the medians between the driveways to the garage entrances along West Lane. Both the Edgemoor at Arlington North and the Edgemoor at Arlington included partial podiums within the public use space. In his opinion, the quality of the podium area as public use space is "debatable" because people do not feel invited up to that area. T. 276.

In contrast, the proposed development provides a pocket park at the corner of West and Montgomery Lanes and along the Montgomery Lane street frontage. He opined that the public use space proposed is of a higher quality than that provided in other developments. T. 277.

Mr. Landfair referred to Exhibit 85 to compare the public use space and private amenity area included in the original and amended development plans. T. 278. Both plans show the area of public use space as 2,225 square feet before adding the pocket park. The Applicant has not "double-counted" the street frontage in calculating the area of the pocket park. The additional area of the pocket park (outside of what was previous included as public use space) is 630 square feet, bringing the total public use space to 2,841 square feet. T. 278-279.

Mr. Landfair testified that the entire pocket park area (including the street frontage previous counted) is 1,000 square feet. He observed that the area will "read" as being much larger than the actual square footage because it will be coordinated with land in the right-of-way and pedestrians will be more likely to congregate there. The steps leading up to the building entrance have been carefully designed to be seating steps; the park was designed to engage people as they are passing by. He stated that the area from the building face to the face of the curb exceeds 2,000 square feet, which will allow people to gather there. T. 279-280.

Mr. Landfair also compared the proposed building's setback from Montgomery Lane with the Holladay Project. The Holladay building was setback 15 feet and had bays along the front of its buildings. The bays protruded 3-4 feet from the face of the building into the public use space, thus decreasing the space that could be landscaped or utilized by the public. Thus, according to Mr. Landfair, the useable public area is comparable to the 12-foot setback in the proposed development. At the time the Holladay Project was approved, only the Edgemoor at Arlington North had actually been approved. Subsequently, 4825 Montgomery Lane has been approved for a 12-foot setback. Originally, the developer of 4825 Montgomery Lane designed the building with more public use space along Montgomery Lane. Staff opposed this approach because they wanted a continuous street edge, or a sense of enclosure along the street. T. 282. He reiterated that the streetscape in front of the Edgemoor feels narrow. The actual distance between the building face and the edge of the street is 16 feet, 10 feet less than provided in front of the proposed development. Thus, the subject property may provide equivalent pedestrian area and still have room for additional landscaping. It will not, in his opinion, feel as confined as the streetscape in front of the Edgemoor High-Rise. T. 282-283.

Mr. Landfair used Exhibit 102(d) to compare the streetscapes on the north and south sides of Montgomery Lane. He testified that the stairs on the end cap units are fairly substantial and take up a relatively large amount of space. A passing pedestrian feels that the stairs encroach into the public realm, even though a portion of them are technically public use space. T. 284. Thus, even though there are 26 feet between the face of an endcap unit and the curb, it doesn't feel as spacious walking along the street. T. 284-285.

He also testified regarding the setback from the northern boundary line. The Villages of Bethesda opposed the Holladay Project because of they felt that the setback provided would negatively impact views from the rear side of their units as well as from their public use space. The developer of the Holladay Project accommodated their concerns, and the Applicant here felt that it was fair to address the concerns in the same way. They support this development plan as long as the 15-setback from the northern property line is provided. T. 286.

Mr. Landfair opined that the City Homes townhouses will have a very generous setback of 73 feet with moving the building further north. In his opinion, sacrificing the 15 foot setback along the northern property line to add 3 feet to the setback along Montgomery Lane will not accomplish additional compatibility with City Homes. Conversely, he feels that the Villages of Bethesda will be impacted more by the development, and decreasing the setback there will have more adverse impact than what could be gained by increasing the setback in the front. T. 286-287.

Mr. Landfair further testified that the Edgemoor High-Rise and City Homes satisfied their MPDU requirement by providing the land for the HOC building on Hampden Lane. The HOC building was not completed for approximately 14 years after the market rate units in the Highrise and City Homes. In his opinion, the MPDUs proposed here are different than the affordable units in the HOC building because they are integrated into the market rate housing and designed to accommodate individuals earning 60-70% of the average median income for the area. The HOC building serves different income levels and has been classified as "transitional" housing. He stated that the term "transitional housing" is intended to apply to individuals with no income who will move as their income increases, as opposed to those who intend to occupy the unit long term. T. 289. In his opinion, the MPDUs provided in this development are important because they serve a different population. T. 290. He believes that including MPDUs in the development meets the Sector Plan's goal to diversify housing on the street and serve the

public interest. T. 290-291. He is unaware of any development that has provided more than the minimum percentage of MPDUs without using the additional bonus density. T. 291. The Council adopted a Zoning Text Amendment permitting an increase in height and density to accommodate MPDUs. He interprets this to mean that the Council realized that providing MPDUs is a valuable benefit to the community deserving of a subsidy through increased density. T. 291-292.

Mr. Landfair pointed out other buildings in the TS-R District that exceeded the height recommended in the Sector Plan because they provided 15% rather than 12.5% MPDUs. Both the Hampden Lane Building and 4901 Hampden Lane exceeded the Sector Plan's height limits because each designated 15% of the units as MPDUs. The Edgemoors at Arlington and Arlington North did not include MPDUs above the minimum required. T. 293.

Mr. Landfair testified that the Applicant has made several changes to the development plan in response to requests from City Homes. While they did not increase the front setback, City Homes enjoys the largest setback of the adjacent properties. The distance between the face of the subject building to the building face of City Homes is 73 feet. The setback from Edgemoor at Arlington North's property line and the Villages of Bethesda's property line are 12 and 15 feet, respectively. The changes made to address City Homes' concerns include the flat roof, windows on all facades, a masonry façade, and vehicles access from the northeast corner of the property on West Lane. They have also included landscaping, streetscape, more than the required number of loading spaces, and providing one loading by at street level. The number of loading spaces exceeds the minimum required by two spaces. T. 297-298. They have not yet redesigned or relocated the lay-by because that element is approved at later stages of the development process. He testified that it is premature to get approval for a larger lay-by because it will be fully analyzed during preliminary plan approval. T. 298-299.

Mr. Landfair stated that the Planning Board approved the 12-foot setback from the western property line. The western setback for the Holladay Building was approximately 7-8 feet. T. 302. The distance between this building and the Edgemoor at Arlington North is approximately 42 feet. The width of the City Homes' alleys is 30 feet; the landscaped mews are wider. In his opinion, the 42-foot space between the Edgemoor at Arlington North and the proposed development is comparable to the distance between the City Homes' townhouse sticks and is more than sufficient to be compatible. T. 303.

Mr. Landfair also testified that the lay-bys in front of the Edgemoor highrise are not restricted to individuals with disabilities nor does City Homes have any accommodation for ADA drop-offs. T. 304-305. Nor has there been any suggestion that there will be fewer than between 100-120 dwelling units. T. 306. He clarified that the length of the building (i.e., from north to south) is 208 feet. He testified that there are few similarities between the Holladay Project and this project, partially because the land area now is larger. The Holladay Project was an oddly configured site; this building has the advantage of utilizing the corner of West and Montgomery Lanes and is of a more efficient design. There is little to compare between the two projects. T. 306-309.

Finally, Mr. Landfair testified that the density of the Edgemoor High-Rise (as approved) is 280 dwelling units per acre based on the gross tract area of that parcel. The density, for zoning purposes, included the land occupied by the City Homes, and therefore was much lower. T. 310-311.

On re-cross examination, Mr. Landfair acknowledged that the Council relied on the Holladay Project in determining the compatibility of 4825 Montgomery Lane and the Edgemoor at Arlington North. T. 313. He stated that he did not know City Homes was required to provide ADA accessible parking at the time it was constructed. T. 316. He conceded that many of the items he had described as being responsive to City Homes had been made after the Planning Board issued its comments. T. 317. He confirmed that City Homes did not oppose the Holladay Project, although he could not remember why that was the case. T. 317. He agreed that the Applicant could have increased the setback of the building along Montgomery Lane without decreasing the setback on the northern side of the property by decreasing the size of the building. That was not an option the Applicant wanted to explore. He could not remember whether the Edgemoor at Arlington North had a commercial component, which could be a reason why it has no MPDUs. T. 318-319. He acknowledged that the Applicant could provide more than the minimum amount of public use space or reconfigure the public use space on-site. The Applicant opted not to do that because they didn't feel the space on the northern side of the property was viable public use space. At some point, the private amenity area to the north could be converted to public use space. T. 319-320. He agreed that the measuring point for building height may be set at the most advantageous point for the developer to maximize density. Public compatibility is generally not considered when establishing the measuring point. T. 322.

He further testified that the 10-12 foot elevation difference between City Homes and the Hampden Lane building helped to mitigate the 71-foot height of the latter. The Hampden Lane developer added courtyards to its building to mitigate the lack of setback from City Homes. These courtyard areas in the Hampden Lane building (that provide light and air to City Homes) are the same width as the alleys within City Homes, approximately 30 feet.

Mr. Landfair acknowledged that the City Homes garages may accommodate two and are primarily for residents; visitor parking is possibly located on the sides of the alley. T. 324. He believes that the parking provided on the subject property is different because it has three loading bays. The Applicant is providing 123 spaces for the 120 units because the Zoning Ordinance requires only  $\frac{1}{2}$  a parking space for each MPDU unit. T. 325. If each unit is assigned one parking spot, they will have two spaces for visitors, assuming the project is developed to the maximum density. T. 326.

Mr. Landfair explained that a podium, to which he referred in earlier testimony, is a raised platform area that is useful if there is space below grade such as parking. It is also useful in handling grades—the Zoning Ordinances permits one to measure the building height from the raised podium. It is not as effective as public use space, however, because the area is raised above the surrounding streetscape and often doesn't read as public use space. T. 328. He clarified that the building height measuring point along West Lane is 335.8 feet in elevation. The highest elevation within the Montgomery Lane right-of-way is between 330 and 332 feet.

Mr. Landfair acknowledged that the Applicant must prove the development is compatible with development in the surrounding area, independent of complying with the Sector Plan. T. 333. The requirement to comply with the purposes and standards of the Zone is also a separate requirement. He agreed that one of the purposes of the TS-R Zone is to prevent detrimental effects to adjoining properties. He conceded that none of the end units in the Villages of Bethesda, which are closest to the subject property, have windows that face directly toward the proposed development. The front and rear windows of the units have views to the west and east with diagonal views of the property. Its mews, or public use space, has a view of the building and the southern units have a view of the property. T. 334-335. These views are mitigated,

however, by trees that are planted along the common property line which screen the structured parking below the tennis courts on the adjacent properties. T. 337. There is about 42 feet of space separating the subject building from the buildings at the Villages of Bethesda. T. 338.

**April 15, 2013, Public Hearing**

1. Ms. Cheryl Cort:

Ms. Cort testified on behalf of the Coalition for Smarter Growth located in Washington, D.C. She is the policy director for the Coalition, whose mission is to accommodate growth while revitalizing communities, providing for housing and travel choices, and conserving natural and historic areas. T. 9. Ms. Cort was *not* qualified as an expert in land planning and instead testified only as a fact witness. T. 12.

She testified that the Sector Plan gives a vision of fostering a pedestrian environment and encouraging a wide range of housing types for people of all incomes, ages, and physical abilities. Specifically, the Plan seeks to ensure an adequate supply of housing, including affordable housing, in areas close to employment and transit, which is comparable to CSG's mission. T. 9-10. CSG believes that this need is more urgent now that the State of Maryland has increased funding for mass transit, and in particular, the Purple Line. T. 11. She believes that the project will enhance housing choices and provide more affordable housing near the Bethesda Metro Station. T. 11. Regionally, this type of development reduces traffic, shortens commutes, reduces household transportation costs, and allows families with moderate incomes to live close to jobs and areas with amenities. T. 11.

Ms. Cort described some elements that she believes are key principals of urban design. She likes to see more supportive pedestrian environments to encourage residents to use transit more frequently. A key principal of this is to bring buildings close to the sidewalk with doors and windows that engage the public realm. This principal builds a "street wall" which makes people feel they have a relationship to the buildings. She thinks this project fulfills this goal and provides a pocket park to animate the main public street. T. 14.

She testified that the pocket park creates a very usable urban space that relates to the building itself so it is not disconnected from the privately used area. Even though she supported the original plan, she thinks this plan is better.

Ms. Cort stated that the larger number of units and the MPDUs contributes to inclusive housing within Bethesda. The smaller individual units size and the MPDUs compliment the build-out occurring in the area. T. 20. She is concerned that the County's Zoning Ordinance discourages developers from providing more than the minimum number of MPDU units. T. 20-21.

On cross-examination, Ms. Cort acknowledged that the National Association of Realtors funds the Coalition's activities. The majority of funding is from foundations and the balance is from individuals and corporations. These include a number of developers, architectural firms, transportation firms, and planning firms. She testifies in support of projects which meet the Coalition's goals. She was not aware of the Sector Plan's recommendations regarding mixed streets nor did she know their purpose. T. 26.

She testified that increasing the pedestrian area would not welcome more pedestrians because pushing buildings further from the street is a "suburban solution". Pedestrians want to feel connected to adjacent uses and because of that, it's important not to oversize parks. She thinks the pocket park is a perfect size for this area. T. 27.

She stated that hardscape is appropriate in a more urban environment to go with green elements. Her position is that it's important the space be usable. The pocket park proposed meets this requirement because it's "sit-able." T. 28. Thus, it creates space that identifies and connects with the surrounding uses. T. 28.

In response to a question from the Hearing Examiner, Ms. Cort testified that she had supported, with variations, the building lines along the street. Further to cross-examination, she is unfamiliar with projects which have incorporated individual entrances along the street front. She believes the single doorway located near the pocket park is good because it connects the private and public areas. T. 30.

Her testimony regarding housing diversity is based on provision of MPDUs rather than rental units. If they could only provide one MPDU per floor, that would alter her support for the project. T. 33. She favors mandating that the applicant must build the range of units proposed. T. 34.

While she felt that having entrances on the street enhanced a pedestrian oriented environment, she did not know how far the entrance was from the street. T. 36. She did not think that the setback should be carried along all of the frontage because that would create a more passive environment—reducing pedestrian's engagement from his or her surroundings. T. 36. When asked what the pedestrian engaged in, she responded that people wanted to feel like people inside the building could hear them if they screamed out loud at night. People in the private space need to engage with people in the public space and vice versa. T. 37. She agreed that tree plantings support a pedestrian environment, although not all benches do so because they aren't connected to their surroundings. T. 38. She did not have any specific example of a building that did not engage people that was located 15 or 20 feet from the street. T. 38.

In response to a question from the Hearing Examiner, she testified that the Board of Directors of her organization have not reviewed the development plan or the Sector Plan because they delegate that function to Staff. T. 39-40.

2. Mr. Dan Reed:

Mr. Reed testified on behalf of the Action Committee for Transit (ACT). He is a non-voting member of the Committee's Board and Chair of their Land Use Committee. According to Mr. Reed, ACT's mission is to support stronger communities and better transit in Montgomery County. He testified that ACT's objective is consistent with the Sector Plan. T. 41.

According to Mr. Reed, transit use is supported best by the highest density housing close to transit, which is typically multi-family housing. It is better to have smaller rather than larger units in order to increase density around transit stations. Locating this housing close to transit is also necessary to promote ridership. T. 43.

Mr. Reed stated that the design of this project supports transit-oriented development. The building's relationship to the street supports its walkability and the size and mix of units offer the opportunity for a more diverse income levels to locate near transit. T. 43.

On cross-examination, Mr. Reed testified that he is familiar with the Sector Plan's object to locate the highest densities around Metro, but was not familiar with specific recommendations relating to the TS-R District. T. 44. He stated that his testimony had been reviewed by the Board of Directors of his organization. T. 45.

3. Marius Radulescu:



Mr. Radulescu qualified as an expert in architecture. T. 49. According to him, his firm is very familiar with the surrounding area because it designed the Edgemoor High-Rise and the City Homes, although he did not personally work on those projects. T. 50-51.

Mr. Radulescu described the changes made to Exhibit 106(f) to correct some omissions. His firm added the HOC building and clarified that the exhibit was not to scale. The exhibit simply illustrates the context of the proposed development in relation to other developments in the TS-R Zone. T. 52-53.

He described the principals underlying the design of the proposed building. They incorporated the basic development standards of the TS-R Zone. The property exceeds the minimum lot area of 18,000 square feet as the gross tract area of the property is 38,800 square feet and the net lot area is 26,410 square feet. While the maximum base density in the zone is 2.5 FAR, the TS-R Zone permits a bonus density of up to 3.05 FAR to provide MPDUs. The FAR of the proposed building is the maximum 3.05 FAR permitted because 15% of the units will be MPDUs.

The TS-R Zone permits a maximum base density of 150 dwelling units per acre, which may be increased to accommodate MPDUs. The development proposes a maximum of 120 dwelling units, which consists of 135 dwelling units per acre. Mr. Radulescu testified that the TS-R Zone requires a minimum of 10% of the gross trace area to be public use space. This development plan provides that minimum amount. In addition, the total amount of open space, including active or passive recreational areas, must be 30%. According to him, 30% of the area subject to the development plan is open space. The TS-R Zone requires 20% of the gross area to be active and passive recreational space; the proposed development meets this requirement as well. T. 54-55.

After looking at the basic development standards, his firm incorporated the County's goal to encourage density around transit centers, and particularly, the goal to provide MPDUs. The Zoning Ordinance permits the base density to be increased above the minimum if the development provides more than 12.5% of the total units as MPDUs. It also permits the Sector Plan recommendations for height and density to be exceeded as well. T. 57. Two other projects have relied on this as well: (1) the Hampden Lane project at the northeast corner of Arlington Road and Hampden Lane, and (2) the building at 4901 Hampden Lane. T. 58. The Hampden Lane project exceeds the 35-foot height limit recommended by the Sector Plan; the building rises to 71 feet in height, a portion of which projects into the 35-foot height limit recommended in the Plan. T. 59.

Mr. Radulescu testified that he then applied the specific recommendations made by the Sector Plan for the TS-R District. These included, again, increased density near Metro, housing diversity, and affordable housing. T. 60. He opined that average unit sizes of 850 square feet contribute to the goal of housing diversity. In this particular area, he stated, there are no rental units. While it is not certain yet whether these units will be rental, rental housing would foster this goal of the Sector Plan. If the project is not rental, in his opinion, the smaller unit size would lend to diversity in the area. The inclusion of MPDUs also contributes to that goal. T. 60-61.

After considering these goals and principles, he designed a project that could meet these goals and be compatible with the surrounding area. T. 61. Exhibit 106(g). His firm designed the Edgemoor highrise and City Homes. He described how, in his opinion, the development fits within the existing area. The Edgemoor highrise is 100 feet high, measured from its podium rather than the sidewalk. Across Montgomery Lane are the City Homes that consist of five

townhouse sticks approximately 50 feet high. The property directly confronting the subject property across West Lane, 4825 Montgomery Lane, is located between the Edgemoor highrise and the proposed development. That project is 65 feet in height, not including a 4-foot parapet, which is a low wall that sits on top of the roof. According to Mr. Radulescu, the Hampden Lane building is located south of City Homes and 4901 Hampden Lane has frontage along Woodmont Avenue and Hampden Lane.

Mr. Radulescu opined that the architecture in the area is varied and none of the architecture is true to a particular style. The Edgemoor High-Rise is best described as “neo-Georgian.” City Homes is more of a federal style of architecture. He could not classify 4825 Montgomery Lane within any particular style. The Hampden Lane and 4901 Hampden Lane projects are of a modern design. T. 62-65. He acknowledged the 4901 Hampden Lane has a step-back in height from 70 to 60 feet along the Montgomery Lane frontage. In his opinion, the area of the step-back is approximately 14 by 18 feet in size. The building does not step back along all of the Montgomery Lane frontage. T. 67.

After reviewing the surrounding architecture, he concluded that there were a variety of styles rather than one particular style which he could incorporate into the building. They addressed several factors, which he described. T. 68.

In terms of scale, Mr. Radulescu testified that there is a very large and high building on the east side of the property, which is the Edgemoor Highrise. He tried to blend in scale between this building and the lower heights along Arlington Road. He also attempted to reflect the City Homes project in terms of massing the proposed development. The City Homes are approximately 50 feet high, with an appearance of a brick frontage. He opined that the proposed development is a contemporary interpretation of a classical style. The buildings along Montgomery Lane in general have a classical style. They mirrored this in the subject project by having a strong middle and separate top. The building also has French balconies, and the scallop creating the pocket park to mitigate the building’s mass. The balconies read as bays or French windows to represent a typical residential building. The design also has a rustication of the base consisting of a brick workout element, which sets the bricks in and out to create differences in texture. T. 69-70.

In his opinion, the building’s step back in height at 50 feet and its maximum height of 70 feet blend with both the north-south transition from the Edgemoor highrise and the east-west transition with the City Homes. The area above the step back is lighter in color in order to dissipate the height. No other building within the area recommended by the Sector Plan for the 65-foot height has a stepback. T. 70-72.

Mr. Radulescu testified as to why the top floor of the building is necessary to accommodate the MPDU bonus density. A 2.5 FAR for this site yields 97,010 feet of gross floor area. The 22% bonus density increases the FAR to 3.05 (i.e.,  $2.5 \times 1.22$ ). A 3.5 FAR translates into 118,352 feet of gross floor area. The difference between the base maximum FAR and the bonus FAR is approximately 21,000 square feet, which is the amount needed to accommodate the additional 2.5% of MPDUs. T. 76-77.

They next looked at the setbacks, development standards, and requirements of the TS-R Zone to determine the building’s footprint. The unconstrained site area consists of approximately 15,800 square feet after deducted setbacks and development standards of the TS-R Zone. As a result, they needed to add an additional 1.35 floors to achieve the 21,000 square

feet of bonus density. If they achieved the extra density by adding floors, the building height would be approximately 75-76 feet. T. 77-78.

Instead of adding additional floors, they “packed” the additional density into the existing 15,800 square foot footprint at a height of 70 feet. In part, they accomplished this by reducing the typical standard residential ceiling height from 10’ 7” from slab to slab to a nine-foot distance between slabs to accommodate the additional density. As a result, the Applicant has compromised the ceiling height to accommodate the bonus density and extra MPDUs. In his opinion, the Applicant is minimizing the additional height necessary to incorporate the bonus density. T. 79.

He opined that the building would be compatible with the surrounding area. One of the elements of compatibility is scale and texture. The surrounding area is relatively traditional. As a result, the building design interprets classical architecture in a contemporary manner. This allows the building to be designed for the present and supports certain technologies and market conditions. T. 80.

Thus, the building has three elements: a strong base, a middle, and a top. The base has rustication brick elements with a façade that is clearly residential in nature, as with the other buildings. Residential elements include punch windows and French balconies that read as bay windows. The top of the building then sits back from the base. In addition, the scallop that creates the pocket park is a totally unique, identifiable architectural element. T. 80-81.

According to Mr. Radulescu, the materials proposed are comparable to those used elsewhere on the street. The large majority of the buildings are brick with a reddish tone. The front of the building up to the step back is the same tone of brick the other buildings in the surrounding area. The punch windows also prevent large expansions of glass and the mullions read the same as other windows on the street, compatible with the residential character of the neighborhood. T. 82.

His firm designed the Edgemoor highrise and City Homes over 10 years ago. When these were designed, the context was the newer buildings on Woodmont Avenue. This resulted in “70-ish straight office, very cold.” T. 83. Since that time, the highrise market has changed and now demands a building that has many modern amenities with a traditional veneer. Thus, when the Edgemoor highrise and City Homes were developed, they created their own context. T. 82-83.

Mr. Radulescu testified that the building will not block the light or cast shadows on City Homes because City Homes sits south of the site. If anything, the City Homes would cast a shadow on the lower floors of the project, probably during the winter solstice. He also opined that moving the building an additional 10 feet further from City Homes would have no affect on the light and air for City Homes. T. 84.

In his opinion, the step back portion will reduce the building’s mass because it creates a top for the building without overwhelming the composition of the street. The step back area achieves a usable terrace without creating a “no man’s land.” T. 83. Thus, the frontage of the building is 50-feet high along the street. In comparison, the project to the west is 48 feet high, the City Homes are approximately 50 feet high, and the adjacent project to the east, 4825 Montgomery Lane, is 65 feet high. T. 85-86. Further to the east is the Edgemoor, which is 100 feet high. T. 85-86.

He also opined that the scalloped entrance breaks up the building mass as well. It takes away approximately one third of the possible street frontage and creates an identifiable element.

In his opinion, the design will “fit” in the middle of the block from a pedestrian perspective because of the step-back’s similarity to the height of City Homes. T. 86-87. From most of Montgomery Lane, pedestrians will be able to see about one foot of the top portion of the building. Being able to see the top does not draw from the building’s compatibility, because it is an important architectural element. T. 87.

Mr. Radulescu described the height and location of the mechanical penthouse. According to him, the vast majority of multi-family buildings have a penthouse because the elevators are generally much taller than a floor. The penthouse is set back approximately 23’ 8’ from the front of the building along Montgomery Lane. It is approximately 26 feet from the building face along West Lane. The height of the penthouse is normally not included in the calculation of building height under the Zoning Ordinance. T. 88-89.

In his opinion, the purpose of the Sector Plan’s urban design recommendation to use hip roofs, gables, turrets, and other types of pitched roof lines was to create a residential character along the street. Many things have changed since that recommendation, such as the use of green roofs that make the design guidelines obsolete. He opined that the spirit of the guidelines was to promote residential architecture, and that the proposed building achieves this even with a flat roof. T. 90-91. The Sector Plan promotes the use of other space; since residents of the proposed building will have access to the roof, it may be included as amenity space. T. 91. A portion of the roof will be a green roof. This will be primarily low planting, and may not screen the penthouse. Its primary purpose is to provide stormwater manage and reduce energy usage. T. 93. The Sector Plan recommends outdoor recreational roof areas. T. 98. Other portions of the topmost roof may be improved with benches or chairs to permit people to enjoy the outdoors, although this has not yet been designed. T. 93. Landscaping features may be incorporated into the step back portion of the roof, although it is not a binding element. T. 95.

Mr. Radulescu testified that the design of the building conformed to the Sector Plan’s recommendations to step down heights toward Arlington Road. The building itself steps down from 70 to 50 feet along Montgomery Lane. The Montgomery Lane frontage is relatively small but they have incorporated a variety of roof lines. When viewed from the street, therefore, one will not see a straight line going on for a mile. There will be a diversity of skyline. T. 99.

Mr. Radulescu observed that the building also achieves the fine grain and texture recommended by the Sector Plan. The grain of this building incorporates the same brick material of other buildings and uses rustication of the base to add texture. The “read” of the solid wall fenestration is the same as other buildings, creating the same residential feel as other buildings on the street. T. 99.

The building also complies with the Sector Plan’s urban design guideline to take advantage of views. T. 100. He opined that this guideline intended to look at the view offered by the building. The building design accomplishes this in several ways. First, it transitions in height between the Edgemoor High-Rise along Woodmont Avenue and Arlington Road. In addition, the scalloped corner creates a clear identifier, similar to the illustration on page 42 of the Sector Plan. In this case, the access is inverted rather than convex. Both, however, create an architectural access for the corner of the building that creates a focal point along the street. T. 101.

Mr. Radulescu also testified that the building has been designed to create the visual interest recommended by the Sector Plan. Visual interest may be created when straight lines are broken up; this building has the step back beginning at the fifth floor and the curved scallop which breaks the potential visual monotony of the building line. T. 101. As previously described, he believes that the building is compatible in style with other buildings on the street. T. 101.

Another urban design recommendation in the Sector Plan is to animate building facades by avoiding bland walls. He stated that the design meets this guideline because all of the walls have varied fenestrations. They have both large and small windows interlaced with French balconies. They have the curved element where the pocket park will be located. For a short street frontage, they have achieved a lot of interest, in his opinion. T. 102.

Mr. Radulescu testified that the parking location will minimize the impact on adjoining residential properties as required by the TS-R Zone. T. 102. The parking is underground and is accessed by a driveway on the northeast corner of the building on West Lane. The building will have approximately 120 parking spaces, which is a one-to-one ratio of spaces and units. In addition, there are three loading spaces: a lay-by on West Lane, a loading space in the garage, and one within the building on West Lane. T. 103. The space on West Lane may accommodate a panel truck, like a UPS moving van. T. 104. The space inside the garage may accommodate a panel truck, UPS truck or U-Haul of comparable size. T. 104.

Mr. Radulescu described the changes that had been made to the building as a result of comments from Staff and the community. One of the changes made is the creation of the pocket park and moving the entrance back from Montgomery Lane. They “relocated” public use space from the back of the building to the pocket park, so that now all of the public use space is located on Montgomery and West Lanes. They also increased the step back of the 6<sup>th</sup> floor façade to 12 feet. In addition, they added a third loading bay within the building on West Lane. The façade along West Lane has more articulations, with indentations to give the building a townhouse feel. T. 106.

He testified that these changes have reduced the size of the building by approximately 2,000 square feet. In his opinion, the building will benefit the area from an architectural perspective. T. 107.

On cross-examination, Mr. Radulescu testified that the building contained 118,352 gross square feet. He didn’t know whether he had reviewed a site plan for 4825 Montgomery Lane stating that the building was 60-feet high with a 4-foot parapet. T. 115-116. He acknowledged that the height cited for that building could be in error. T. 116. He did not know how the height of City Homes he cited had been measured. T. 117.

He testified that the perspectives shown on Exhibit 72 include trees that do not currently exist—this is an example of “artistic license.” He did not know whether the streetscape in front of the other buildings was accurate, nor did he know the approximate height of the trees. T. 122-123.

He also testified that the project is compatible with the neighborhood because it meets all of the development standards of the TS-R Zone. T. 123. He acknowledged that the amount of public use space provided does not exceed the minimum required. T. 124. He could not remember the difference in public use space between the original and amended development plan, but after reviewing the two development plans stated that the original plan provided 14% green space as opposed to the 10% proposed in the amended plan, a difference of approximately

1,200 square feet. T. 125-127. He believes that the difference exists (even though the building size and setbacks have not significantly changed) because the public use space has been reassigned, but he could not definitively say why it is reduced. T. 130.

Mr. Radulescu conceded that none of the buildings that are adjacent or confronting are taller than the proposed building. He did not know the FARs of the other projects. T. 132. Nor did he know the heights of the roof step backs on the Hampden Lane building. T. 133. He stated that he had not considered reducing the size of the interior units to reduce the height because he started with the maximum FAR to design the mass of the building. T. 134.

Mr. Radulescu did not know when in the design process they determined that there would be a green roof. He did not have the design of the green roof, although a portion of the roof was intended to be private recreational area, although he did not know when that was decided either. T. 136. He did not know whether the roof area had been included in the calculation of private amenity space for the project. He did not know to what extent the rear area had been included in private use space. He testified that the green roof will not have trees because it may function only with certain types of plants. The private amenity space may include access, such as plants. There will be a railing on the roof for safety reasons. T. 139-140.

He testified that the loading space on West Lane extends 22 feet inside the building on a flat surface. The access the loading space within the building, one must proceed down a ramp to the loading area. The ramp has an 8% grade for the first 10 feet, then goes to 16%, then goes to 8% for the last 10 feet. Although the building is only 80 feet wide, one must drive 150 feet to reach the garage loading area because of the grade. T. 142-144.

Mr. Radulescu testified that if a building is built on top of a ridge, it will be more visible. He conceded that the adjacent buildings are lower than this project, which he called an architectural "accent." T. 151. He believed that the project did achieve the guidelines for infill construction due to the step back and the scalloped edge. The scallop also meets the guidelines requiring sculptural elements to create visual interest in the roofline. T. 152. He also opined that the Sector Plan's recommendation to create open spaces is met by the pocket park, although providing a real active use park is not realistic. T. 154. He stated that they are proposing a "bay window reading" by using windows that are grouped in a manner suggestive of bay windows. The purpose is to make the building appear more residential. T. 156. He did not know why the Planning Board recommended the 12-foot step back at the fifth floor, but acknowledged that the purpose was to break up the mass and scale of the building. T. 160.

He conceded that the southernmost City Homes units would have views to the south blocked by the Hampden Lane project. Views to the north will be of the subject property for some of the units. T. 163.

Mr. Radulescu described the changes made to the subject building along the West Lane frontage. In the original plan, the perimeter of the building was straight; in the revised plan, it has indentations. Every 12 to 24 feet, the building is setback 12 feet. These were intended to make the building look more residential. The frontage along West Lane is approximately 100 feet. They broke up the mass along Montgomery Lane by creating one large break at the corner scalloped area. T. 162. The 70-foot Montgomery Lane frontage is not broken up in 12 or 24 foot sections, although it has a "reading" of bay windows. T. 165-167.

Mr. Radulescu estimated that the Montgomery Lane frontage for 4825 Montgomery Lane is almost the same as that of the subject property without counting the scallop. He acknowledged that a portion of that building was setback along the Montgomery Lane frontage.

T. 170-171. He disagreed that the use of three different windows broke up the mass of that building. T. 171. In his opinion, there was no attempt to break the building's mass. T. 173. He did not know what density the Sector Plan recommended in terms of dwelling units per acre. T. 175. He admitted that the building could be smaller if the unit sizes were smaller, rather than designing the building to the maximum FAR. T. 178. He also acknowledged other 70-foot buildings, including Hampden Lane and 4901 Hampden Lane, overlooked either commercial or office uses. T. 184.

He testified that he did not use real bay windows to create a residential building character because that would decrease the setbacks. A true bay window would be approximately 18 inches in depth. He acknowledged that this could be accomplished were the building setback more from the street. T. 186.

Mr. Radulescu explained how unloading would occur from the garage loading area. There will be an elevator between the loading dock and the entrance which opens to the loading area, eliminating the need to travel through the lobby. T. 188. The depth of the building is approximately 209 feet. A resident located to the rear of the building will have to walk approximately 70 feet to reach the elevator core. If the elevator core were setback further from the street, it would be closer to the rear units. T. 190-191.

He acknowledged that the mechanical penthouse will have to be slightly higher, approximately 15 feet, if access to the roof is provided to the residents. T. 197. In addition to the penthouses, which services the elevators, there will be other mechanical structures on the roof, such as the HVAC. These will be approximately four feet high. T. 202.

Mr. Radulescu described the western side of the building. The Applicant proposes to put pavers and planters in the southernmost portion of the 12-foot setback area. A driveway located on the adjacent property borders the 12-foot setback area. One will be able to look beyond the property line, although they will see the Edgemoor at Arlington North. T. 208-209. He asserted that the windows along that side are residential in character because of the number of mullions and the density of the windows creates the appearance of small glass areas. There are office buildings which use the same technique to create a residential character. T. 214-215. They have two different types of windows to break the monotony along each side of the building. T. 215.

On re-direct, Mr. Radulescu testified that the window-types used in the proposed development are similar to those used in the Edgemoor at Arlington. He stated that TS-R Zone requires 20% of the area to be active and passive recreational space; the proposed development designates 26% of the area as active and passive recreational space. T. 217. The rooftop area needed for the mechanical equipment is similar to that needed in other residential development and the equipment will be screened. Nor will the equipment be visible from the street. T. 218. The penthouse is approximately the size of two elevators, roughly 11 by 22 feet. The elevator must go to the roof to meet ADA requirements if there is active recreational space on the roof. T. 220.

Mr. Radulescu further testified that the Sector Plan does not identify the subject property as a site for urban open space. T. 221. All of the developments on the street are compatible, even though they have different architectural styles. T. 224.

On re-cross, he acknowledged that the building was designed to maximum height, density, bulk and mass. T. 225. They tried to "pack" the building in the most efficient way to minimize the additional density from the MPDUs. T. 226. He agreed that the developments



along Montgomery Lane between Woodmoor Avenue and Arlington Road contributed most to the compatibility of the subject project, although he did not know the history of the Sector Plans for this area. T. 228.

4. Mr. Chris Kabatt:

Mr. Kabatt qualified as an expert in transportation planning. T. 230. His firm prepared a local area transportation review and policy area mobility review for the subject property. He testified that Woodmont Avenue is a north-south arterial roadway located east of the property. It is one way southbound from Old Georgetown Road through Hampden Lane. Montgomery Lane is eastbound only from Woodmont Avenue approximately to West Lane, at which point it becomes a two-way street ending at Arlington Road. T. 232. The Arlington Road intersection is controlled by a stop light. There is a stop sign for traffic proceeding southbound on West Lane entering Montgomery Lane, and there are no controls along Montgomery Lane at that intersection. T. 232.

Mr. Kabatt explained the general circulation in the area. To get to the property from Woodmont Avenue, one may either proceed further down Woodmont Avenue to Hampden Lane, or could turn right on Montgomery Lane and turn right onto West Lane and then out to Arlington Road. Coming from the south, one would use Arlington Road to reach Montgomery Lane. He believed that the purpose of having Montgomery Lane be eastbound only from Woodmont Avenue was to improve the pedestrian environment in that area. T. 233.

He described the results of his firm's traffic study. The existing uses on the property generate 16 a.m. peak hour trips and 11 p.m. peak hour trips. Assuming the maximum proposed density of 120 units, the project will add 20 trips and 25 trips in the a.m. and p.m. peak hours, respectively. Combined with the existing trips, the site generates 36 trips in both peak hours. T. 236. He noted that trip generation is based on the number of units rather than the number of parking spaces. Although this project has 72 more units than the Holladay, it has only 38 more parking spaces. T. 236. The Bethesda CBD trip generation rates assume that not all parked vehicles will leave or return to the West Lane site during the same peak hour. T. 236. In his opinion, the development's traffic impact will be less than reflected in the traffic study because of the lower ratio of parking spaces to dwelling unit. T. 237.

An acceptable Critical Lane Volume (CLV) for the Bethesda CBD is 1800 CLV. He evaluated three intersections for the traffic study: (1) Woodmont Avenue and Montgomery Lane, (2) Montgomery Lane and West Lane, and (3) Montgomery Lane and Arlington Road. All intersections operated at acceptable levels. T. 238.

Mr. Kabatt testified that the project met the Policy Area Mobility Review (PAMR) requirements as well because the number of trips would have been fully mitigated in both the morning and evening peak hours. This project will probably be subject to the new Transportation Policy Area Review (TPAR) test. Because this property is located within the Central Business District, it will not be required to pay any impact tax. T. 238-239.

He opined that all three intersections studied operated well below the maximum congestion levels for the area. Based on the CLV, the Montgomery Lane/Arlington Road intersection operates at 27 and 42 percent capacity during the a.m. and p.m. peak hours. He also evaluated peak hour levels of service and delays at the Arlington Road/Montgomery Lane intersection and along Montgomery Lane using the Highway Capacity Manual (HCM) methodology because it evaluates vehicle cues and delays. The HCM method revealed that the intersection and approach operate at acceptable levels during both peak hours; the Montgomery

Lane approach currently operates at only two to thirteen percent capacity. The HCM methodology revealed vehicle queues of 22-50 feet, which equates to one to two vehicles. All vehicles are able to turn left and right onto Arlington Road during one signal cycle. T. 238-240.

According to Mr. Kabatt, the Montgomery Lane is classified as a “mixed street” in the Sector Plan and a “business street” by the County’s Master Plan of Highways and Transitways. A “mixed street” is defined as one with limited capacity. Montgomery Lane is approximately 20 feet wide with on-street parking on the one-way segment. Currently, capacity on Montgomery Lane approaching Woodmont Avenue is only 2 to 13 percent. He opined that the street is operating at a limited capacity based on these numbers. T. 240-241. Based on his physical observations of the area and the quantitative results of the traffic study, he opined that the photographs displayed on Exhibit 87 accurately represent existing conditions. T. 242.

The traffic study indicates that the Montgomery Lane/Arlington Road intersection will operate at between 29 – 44 percent capacity during both peak hours, including the background development. According to Mr. Kabatt, this represents a 2 percent increase from existing conditions. He opined that the HCM analysis demonstrates that the Montgomery Lane approach will operate at 3-15% capacity including background traffic, pipeline development and the proposed project. This represents an increase of 1-2% above existing conditions, which in his opinion will be imperceptible. T. 243. In his opinion, the traffic impact of the project is insignificant in terms of actual additional vehicles. T. 242-243.

Mr. Kabatt testified that he had observed existing vehicle operations along Montgomery Lane. He observed vehicles parked outside of designated areas, particularly on the one-way section on the south side of Montgomery Lane. Their field observations of vehicle queues conformed to their HCM analysis of one to two vehicles during the peak hours. T. 244. His firm projected future vehicle queues to increase to 37 and 57 feet when pipeline development and the proposed development are factored in. This results in essentially the same length as the existing queue. He opined that Montgomery Lane does not experience the same queuing delays as other CBD intersections because of its limited capacity. T. 245. According to him, the project will have an imperceptible impact on traffic circulation. T. 246.

He described how vehicles currently access the existing property. There are four curb cuts for each of the four separate structures. One is located on Montgomery Lane and 3 are on West Lane. T. 246. The four existing driveways will be consolidated into driveways. The northernmost driveway accesses the parking garage. The driveway immediately south of that accesses a loading bay and will be used by service vehicles and delivery vans. A service corridor connects the service space to the front lobby. Most importantly, the curb cut on Montgomery Lane will be eliminated. T. 247. Mr. Kabatt testified that it is common to have a service corridor connect the loading area with the lobby because many owners of residential buildings like to have the service entrance and the lobby separated.

Mr. Kabatt opined that vehicular access will be safe, efficient, and adequate. The dedication on West Lane will result in 50 feet of right-of-way with a 22-foot section of paving. According to him, that width is more than adequate to handle the projected traffic. Location of the driveway on the northernmost end of the building separates vehicles from pedestrian traffic because the lobby entrance is at the corner of Montgomery and West Lanes. Montgomery Lane in general will continue to operate well within the congestion standards. T. 248. In addition, one of the two curb cuts along West Lane will be dedicated solely to a loading and service bay, removing them from Montgomery Lane. He opined that this will prevent the type of congestion

created by service vehicles at the adjacent building. There remains a possibility of locating an additional lay-by on Montgomery Lane. T. 248-249.

In his opinion, the 120 parking spaces will be more than sufficient regardless of whether the project is rental or condominium units. He anticipates that most of the MPDU owners will not have cars, freeing up approximately nine spaces for visitors. T. 249. In response to a question from the Hearing Examiner, he explained that parking is required at a ratio of one space per dwelling unit and ½ space for every MPDU unit. T. 248-249. U.S. Census data for the tract surrounding the subject property indicates that approximately 36% of renters have no vehicles. This percentage means that a minimum of 43 units will not have cars if the project is rental. That number does not include the 18 MPDUs. In addition, there are numerous public parking garages within walking distance of the property. T. 249-250.

He also testified that the number of loading spaces exceeds the minimum number required by the County's DOT. When the project team met with DOT in the Spring of 2012, DOT determined that only one loading space would be sufficient. The addition of two more only improves the situation. T. 250.

Mr. Kabatt described how deliveries will be made to residents. The building loading bay has a door to an interior service corridor which will be required for deliveries and moves. Delivery people could be advised of the procedure using signs—if they attempt delivery through the lobby and are turned away, he does not believe they will attempt it again. T. 252. Based on his observations in the area, the Fedex truck takes approximately 5 minutes to make deliveries, so the lay-by would not be occupied for extended periods. T. 253. Both DOT and Technical Staff have determined that the project will not severely degrade the pedestrian and vehicular environment. T. 254.

Mr. Kabatt pointed out that if parking had not been permitted on the south side of Montgomery Lane, as recommended by the Sector Plan, the other developments would not experience the congestion stemming from deliveries to those buildings. T. 255-256. He did not know why DOT had approved parking at their location. T. 256. He testified that, even though Montgomery Lane is only 20 feet wide, cars travel at unusually low speeds, approximately 5-10 miles per hour. In his opinion, the 11-foot lane width along West Lane is more than adequate to permit traffic to circulate. T. 257.

On cross-examination, Mr. Kabatt testified that a lay-by along Montgomery Lane will either take away a grass panel or move the sidewalk further north. T. 260. If service deliveries occurred along Montgomery Lane, they would have to cart the deliveries to the service entrance on the side. In his opinion, the delivery time would remain at 5 minutes. T. 262-263. He believes parking is prohibited along Montgomery Lane due to the width of the roadway; he could not recall whether there were signs. If people wish to visit the building, they would either have to park in the designated areas or on another street. West Lane does not permit parking. T. 264.

Mr. Kabatt stated that the counts of existing traffic were done by hand and were checked against historic data from prior counts within the area. He conceded that Montgomery Lane was the same width as the minimum required for two-way drive aisle in a parking lot and did not believe that width would be extended. The existing paving on West Lane varies in width, but in the future will have 11-foot travel lanes. T. 268. These widths are comparable to those required for a tertiary or standard residential street under the road code. Mr. Kabatt did not know of any other streets classified as tertiary streets within the CBD. He opined that 10-12 foot travel lanes

are adequate for CBD streets. If DOT determines that something wider is necessary, they may increase the paving. T. 268-271.

Mr. Kabatt acknowledged that he has seen photographs showing congestion on the eastern side of Montgomery Lane. In order to pass parked vehicles, one would have to either turn into West Lane or pull over to yield to the other vehicle. He observed that the cars blocking the street in the photographs were parked outside designated parking areas, narrowing the travel lane. He agreed that this is a problem which occurs along the street. In his opinion, the minimal traffic generated by the proposed development will not significantly impact what occurs on the street today. T. 274. He does not believe that on-street parking will be further reduced when 4825 Montgomery Lane develops. T. 275.

He agreed that the development plan calls for the minimum number of required parking spaces. If people have dinner parties, they may park in the public parking garage to the north by the Metro. There are also private parking garages in the area as well as some on-street parking near-by. Market conditions suggest that one space per unit is adequate. T. 276. He does not agree that parking is at a premium in the area because people use the public and private garages. There is a private garage on the east side of Woodmont Avenue south of Montgomery Lane and in an office building north along Woodmont on the north side of Montgomery Lane. Another garage is underneath Bethesda Metro Center 3. He acknowledged that all of the garages require pedestrians to cross Woodmont Avenue to reach the subject property and conceded that most were a two to three block walk. T. 279.

According to Mr. Kabatt, service vehicles would use the loading spaces and the lay-by, not parking garages. The lay-by may accommodate two cars or one 30-foot truck. It could possibly accommodate two smaller trucks. If the lay-by is occupied, a delivery vehicle could use the lay-by immediately to the north along West Lane. He did not know exactly where the loading area in the garage will be located; the garage entrance must be a minimum of 98 inches high to meet the ADA. That would accommodate a standard U-Haul moving van, but will not accommodate a tractor trailer or 30-foot box truck. T. 282-284. Should a tractor-trailer deliver to the site, they would either have to pull up to the end of West Lane and turn around to get into the loading lay-by. T. 285. The largest truck that could get into the loading area along West Lane is a 20-foot truck. T. 286. He assumed that if all the loading spaces were full, the driver would have to wait for a loading space to open. T. 287. In his opinion, large tractor trailers will not be visiting the site because these companies typically consolidate moves into a smaller truck, given the size of these apartments. He recognized, however, that some companies consolidate multiple moves in a single truck, particularly in urban areas. T. 288-289.

Mr. Kabatt testified on where individuals with disabilities will park. There will be ADA spaces within the garage, but to his knowledge, none of the on-street parking spaces are reserved for the handicapped. T. 288.

#### **April 16, 2013, Public Hearing**

##### **1. Mr. Chris Kabatt**

Mr. Kabatt continued his testimony from the previous day. He clarified that the Census data on which he based his testimony includes the area within blocks of the subject property. He testified that 4 percent of owner-occupied units do not own vehicles. The minimum number of required spaces determined by the Zoning Ordinance takes into account the need for visitor parking. Because the Census information does not reveal whether the owner-occupied rate is based on townhouses, single-family homes or multi-family units, he also uses market data to

determine whether the number of spaces is sufficient, although they have not done this parking study yet. In his experience, some associations assign each owner a parking space and in some, the parking spaces are unreserved. T. 13-15. He testified that he did not know of a condominium building that provided no parking spaces, but there is a trend toward providing less than a 1.0 to 1.0 ratio between units and spaces because the spaces aren't needed. T. 16. He acknowledged that visitors may use the parking provided in the County library on the west side of Arlington Road. T. 18-19.

He further testified that the Applicant is considering locating a lay-by along Montgomery Lane. He acknowledged that delivery drivers may perform U-turns or use the driveways in City Homes and 4825 West Lane to align themselves for a delivery or return after delivery. T. 22-28. He opined that these maneuvers would be safe because of the low traffic volume along Montgomery Lane and because commercial drivers know their vehicles. T. 25, 28. According to him, the trip generation rates include service deliveries. T. 31.

Mr. Kabatt confirmed that the lay-by along West Lane is 40 feet long and 6 feet wide. The County Code uses a standard car length of 18 feet. Delivery trucks are typically 15 to 20 feet long. He believes that trucks may back into the lay-by safely when a car is parked at the southernmost spot because the edges of the lay-by are angled to make it easier to get in and out. He admitted that he has seen UPS trucks simply pull up to the curb and park while making deliveries. Spaces in parking lots are typically 8 feet wide. T. 35-39. He acknowledged that some of the delivery vehicles may protrude from the lay-by due to its width. T. 40. He conceded that larger moving trucks would not use the garage. T. 41. The garage entrance is 10' 6" high and UPS trucks are general 6-8 feet high. T. 42.

Mr. Kabatt did not know precisely how visitors would access individual units from visitor parking spaces, but stated that this is an operational issue generally addressed later in the process. T. 44. Typically, there is a means for the visitor to contact the occupant they wish to visit, who meets them in the garage or leaves a visitor pass at the lobby. T. 44.

He identified the locations that he had observed had illegally parked vehicles. These were on the south side of Montgomery Lane across from the Edgemoor highrise. Some of these vehicles were service vehicles, such as electricians and landscaping vehicles. He conceded that he had observed the street during the a.m. and p.m. peak hours and acknowledged that most service vehicles avoided those hours. T. 50-51.

He confirmed that the portion of Montgomery Lane west of West Lane did not have any parking signs nor are there any outlet signs at the intersection of Arlington Road and Montgomery Lane. T. 53.

On re-direct examination, Mr. Kabatt testified that he knew another multi-family project that provides only one loading space. This is a project located on Old Georgetown Road and Commerce Lane that happens to be 120 units as well. He does not believe a fourth loading space along Montgomery Lane is necessary for the site to operate safely and efficiently. While it could physically be accommodated, the Applicant has not requested it. T. 55.

He clarified a truck 30 feet long is the largest that may fit into any of the loading bays. A 30-foot truck may accommodate a 3-4 bedroom home. U-Haul recommends a 14-foot truck for an 860 square foot unit, which is the average-sized unit in this development. An 1,100 square foot unit requires a truck that is 17 feet long. Thus, the loading bay may accommodate one of these trucks and the lay-by may accommodate two of these trucks. T. 56-57. He reiterated that it is common for moving companies to transfer contents from a large moving truck to a smaller

unit to complete a move into urban areas. T. 57. In his opinion, the possibility that a tractor-trailer would be used to move into a unit is “remote.” T. 58.

He testified that during the peak hour, there are currently approximately 110-120 trips along the one-way portion of Montgomery Lane. West Lane has 28 trips, and in the future will have approximately 58 trips, or one vehicle per minute. T. 58-59. He did not see any problems with using the lay-by when vehicles were on West Lane because West Lane will have two 11-foot travel lanes. T. 59.

He opined that the number of owner-occupied units without cars may be higher than 4% in this development because the Census data included single-family homes. According to him, it's more likely that individuals with 2,500 square foot homes will have more cars than those occupying an 860 square foot unit. He has worked in urban areas of Montgomery County, Washington, D.C., and Arlington County. In his experience visitors expect to utilize public or private garages that may be two or three blocks away. Even when visiting a single-family home, it is sometimes necessary to park two to three blocks from the location. T. 61. Walking two to three blocks is not out of the ordinary for guests in any location, particularly in an urban area. T. 61.

Mr. Kabatt compared the width of Montgomery Lane to the travel lanes on Connecticut Avenue within Chevy Chase, which are also 10 feet wide. According to him, Connecticut Avenue at this location carries approximately 3,700 peak hour trips on an average day. Montgomery Lane carries only 155 peak hour trips within the two-way section, or 3 vehicles in an hour. T. 63.

Mr. Kabatt also concluded that the proposed development will not exacerbate any existing problems with service vehicles because it provides three loading areas. He reiterated that, in his experience, it is common for moving companies to transfer large loads to smaller trucks that proceed to the actual destination. T. 70. He believes they do that because many residential buildings either have no loading dock or have a small loading dock and are located on narrow streets. T. 70-71.

## 2. David Judd, Jr.:

Mr. Judd qualified as an expert land planner. T. 78. He described the proposed landscaping of the public space and private amenity areas. T. 80. The Applicant proposes seating in the pocket park and along West Lane as well as a passive patio in the back of the building. In addition, there will be an extensive green roof on top of the building. T. 81. Street trees along Montgomery Lane will be Willow X, which is required for this street. In addition, shrubs and other ground cover will be on Montgomery Lane and carry through along West Lane. He is still designing the passive activity area in the rear of the building, which will be determined during site plan review. T. 81, 84.

Mr. Judd worked with Technical Staff when redesigning the building to include the pocket park. Indenting the building created an opportunity to locate open space along the mixed-use street to give it more of a pedestrian flair. T. 82. It furthers the concept of pedestrians gathering along the street. They have created seating along Montgomery Lane and will provide bike racks and more seating wrapping around onto West Lane. T. 83. Mr. Judd opined that the public use space will be inviting to pedestrians walking along the street. T. 85.

Mr. Judd confirmed that there will be passive recreational space on the roof, but hadn't designed it yet. He did not know whether any of that space had been counted toward open area. He clarified that there will be two benches along Montgomery Lane and two along West Lane near the entrance. He acknowledged that the design would have to be modified were a lay-by built along Montgomery Lane. T. 91.

When asked whether the 10-foot setback along Montgomery Lane could be expanded to include additional space, Mr. Judd testified that visual consistency and continuity along the street were important in creating a pedestrian environment. T. 93. In his opinion, the public benefitted more from a consistent line of buildings than having varied setbacks. T. 94.

Mr. Judd testified that the street trees must be placed 30 feet apart to prevent entanglement of the trees. Trees planted in the green roof would have to be sedum, which is a very large growing plant that requires 3 to 6 inches of planting area. It is a low-growing carpet and is very tolerant of drought and urban conditions. T. 97. He is unsure how thick the soil will be because it will be based on stormwater management capacity. *Id.* The green roof (for stormwater management) will cover most, but not all, of the roof. T. 98. They have not yet determined what other landscaping may be on the roof. T. 99. He believes that someone standing on the street might see the top of plantings on the roof, but they are not creating a green screen. T. 101.

The Applicant agreed to include a binding element stating that there would be no lay-by along Montgomery Lane. T. 107.

Mr. Judd testified that smaller trees could be planted between the building and the sidewalk along Montgomery Lane. That space is approximately 14 feet in width. This could accommodate a Japanese Maple or flowering cherry. Widening that space to between 20 and 25 feet does not matter because there is upright material that will fit in the 14-foot space, although it may be possible to plant larger trees if the space is bigger. It is not necessary to remove the street trees as they grow because there is plant material that will fit under the understory. T. 114. He also testified that adding more landscaped area between the sidewalk and the building would be inconsistent with the streetscape along Montgomery Lane and aesthetically undesirable. T. 116.

In response to a question from the Hearing Examiner as to whether the building could be setback further from Montgomery Lane, Mr. Judd opined that the quantity of space is not as important as the quality of the space. T. 122. He felt that the setback provided is ample to accomplish a high-quality space, although he recognized that the quality of space is a subjective matter. T. 124. By "quality" space, he means having a landscape base between the hierarchy of plant material, with different colors and textures to create visual interest. It's not a "bland visual corridor." T. 125.

To illustrate his point, Mr. Judd testified that the City Homes townhouse sticks are 105 feet long. There is a 73-foot distance between the building faces of City Homes and the subject property, for a total of almost 200 feet between the southernmost townhouse and the proposed building. Given this distance, he believes that an additional 5 or 10-foot setback will be unperceivable. T. 127.

3. Mr. Perry Berman:

Mr. Berman qualified as an expert in land use planning. T. 136. He was chief of the Community Planning Division of the Maryland-National Capital Park and Planning Commission

during adoption of the Sector Plan. He was responsible for supervising most of the master plans adopted during the 1980's and 1990's. T. 137.

Mr. Berman testified that "we" felt that "we" could do a better job than the results of the 1976 Bethesda plan. The 1976 plan failed to create enough housing, particularly in the TS-R area. The latter area was one of the key locations he felt necessary to encourage new housing development. T. 139. Page 29 of the Sector Plan speaks about the need for more affordable housing and high-quality rental housing. T. 142.

According to Mr. Berman, there were many reasons why the Plan supported more housing in the area. He wanted the area to be active 24 hours rather than be reduced into an office canyon at night. Adding housing close to jobs reduces long-distance commutes and other trips. He stated that the restaurant business in Bethesda is very important and they needed to provide homes both for those who live in Bethesda and work at restaurants. T. 142-143. The obvious reason for locating jobs in Bethesda is to support the use of the Metro station and local retail. T. 143.

Mr. Berman testified that the transition between downtown Bethesda and its edges was one of the more difficult planning issues. Staff tried to concentrate the housing more towards the center of town rather than the edges and felt that the TS-R District was an appropriate location. T. 144.

According to him, Staff would have preferred high density along Arlington Road were it not necessary to create a transition to the residential edge of the CBD. The 35-foot height limit is designed to mitigate the density along the edges of the District, not from the middle of the District. T. 145. The library served as a good buffer, in his opinion, but thought that the 35-foot height limit would be another step to ensure compatibility. This is to transition to higher density as one approaches Wisconsin Avenue. T. 145.

To implement the recommendation of the Plan, the Council amended the TS-R Zone to permit a greater amount of building coverage, to permit a wider range of commercial uses, and to allow for a smaller assembly of parcels. T. 146. While the TS-R Zone does have some mandatory setbacks, in his opinion, the amendments primarily attempted to incorporate design flexibility to allow more urban development. T. 146. Mr. Berman corrected his earlier testimony that there were setbacks in the TS-R Zone after being shown the Zoning Ordinance. T. 147. In his opinion, the amendments were intended to permit bigger bulkier buildings. T. 147.

He testified that the "mixed street" concept copies a European concept where the street works for both cars and pedestrians. This street is more intimate and friendly than a suburban street; it is an urban concept. T. 148-149. An example of a mixed street would include Maryland Avenue in the City of Rockville. Another example is Ellsworth Avenue in Silver Spring and the avenue behind the AFI Theater. These have commercial retail, cars and pedestrians. T. 149. He believes this describes the mixed use street envisioned by the County Council when it adopted the Plan. T. 149.

In his opinion, the Plan also reflected the community's concern that there would be a lot of cut-through traffic along Montgomery Lane because of its proximity to Metro. As adopted, the Plan implements several mechanisms to reduce traffic, including the narrow width of the paved area and the widening of the sidewalks. In his opinion, the design of the street successfully achieved both the goal to create a more urban context and to reduce traffic. T. 151. The design of the street is based on having 100 dwelling units per acre in the TS-R District.



Current development density is approximately 56 units per acre, including the proposed development. Because of this, he believes that the development plan is consistent with the objectives of the mixed street. T. 152.

Mr. Berman testified that the Sector Plan is an old plan because it states that it intends to look ahead only 20 years. It recognizes, in his opinion, that existing circumstances change over time and the Plan may become less relevant as time passes. He believes the Council intended the illustrations simply to be examples. When looking at older master plans, the core goals should be adhered to and the specific recommendation become outdated. T. 154.

He believes that there are several core goals of the Plan to which development should adhere. These include (1) providing more housing, (2) providing affordable housing, and (3) providing diversity of housing. T. 154.

As one of the Plan's authors, he does not feel that existing development along Montgomery Lane fulfills the Plan's objectives. According to him, there is not enough smaller, cheaper units, there are not enough rental units and there are not enough affordable units. In his opinion, the density along Montgomery Lane should have been higher. T. 157.

He opined that he would have looked at the Sector Plan when purchasing a unit within the City Homes and expected to see other buildings, building penthouses, and the tops of buildings. T. 161.

On cross-examination, Mr. Berman conceded that three staff members had done the bulk of the work writing the original drafts of the Plan and that people wishing information on the Plan were referred to them. These individuals attended many community meetings and meetings with individual property owners. T. 163. They also attended meetings and prepared responses to the Planning Board and the County Council. He conceded that these three individuals were the most knowledgeable about the evolution of the Plan. T. 166. He could not recall exactly, but believed that his division worked on three to five master plans at one time. Mr. Berman was involved in any other major County-wide planning issue during this time as well. T. 165.

Mr. Berman agreed that projects that had been constructed and approved prior to adoption of the plan would have been considered in the Plan's recommendations for this District. Staff would have weighed whether the buildings implemented the vision of the new Plan. He did not know which projects were approved after adoption of the Plan, but was familiar with the Holladay Project. He testified that it was 55 feet high and less density than the proposed development. He knew that the Council found it consistent with the Plan, as they had other developments in the District that had less density than recommended by the Plan. He did not work on any projects after the Plan was adopted because he left in 1996. T. 167-169.

He conceded that the developments approved by the Council as being consistent with the Plan did not fulfill the Plan's goals. These included the goal of providing a diverse mix of housing. Nor do some of the buildings, such as the highrise Edgemoor and the Hampden Lane building, constitute "low-rise" development. T. 171. He testified that the ultimate responsibility for failure to meet these goals rested on the County Council. T. 172.

In his opinion, the height limits in the Sector Plan must be read in conjunction with amendments to the MPDU legislation. These amendments permitted buildings which exceeded the height limits in the Sector Plan to encourage more MPDUs. He could not remember, however, when the MPDU legislation was adopted. He acknowledged that many projects do not achieve the number of units requested. T. 175.

He disagreed that the Plan's language limiting density to 2.5 FAR should be read despite the density permitted by the amendments to the MPDU law. In his opinion, the language recommending densities "up to 100 du/acre" is illustrative and does not set a cap on development. T. 177. He opined that the MPDU law superceded the recommendations of the Sector Plan, although he acknowledged that at the time the Plan was adopted, a density of 2.5 FAR was the maximum amount recommended by the Plan. T. 179-183. Upon further questioning, he stated that he could not speak to the specifics of the TS-R Zone.

Mr. Berman conceded that a mixed street may become less pedestrian friendly if more vehicles are added to the street. Despite testifying that illustrations in the Plan need not be strictly adhered to, he felt that the illustration that showed a straight building façade along the street was more important because it shows up in another diagram as well. T. 189.

Mr. Berman agreed that the Applicant has not included a binding element that the units will be smaller and more affordable than other units on the street and that it would be desirable if it were. T. 193. If the units were larger, he would still find it compatible with the Sector Plan, but would not be as supportive. T. 194. He believes that larger, more expensive units would still be approvable. T. 196.

He acknowledged that the 1994 Sector Plan recommended heights lower than what was available under the TS-R Zone. Despite this, he maintained that the amendments permitting more building coverage and smaller assemblages were intended to spur more development. T. 199. He considers the height limits in the Sector Plan only a "guideline." As to the tenting concept, he opined that each building did not have to be lower than the building next to it; rather the starting point and ending point have to be at the levels desired. T. 200-201. He conceded that the Sector Plan balanced the goal of providing more housing with other goals such as compatibility and height. T. 201.

He stated that he would not tell potential owners of dwelling units on Montgomery Lane that development would be three to six stories as recommended by the Plan. He would say that was a guideline, and he would give ranges of things that he would foresee. T. 203. While one could interpret the Master Plan as recommending an urban village with buildings three to six stories and a maximum of 65 feet, he would not do so. Rather, he would interpret it to mean that high-density housing would be located there. T. 204. He was not aware that the Council recently approved a decrease in the number of units at 4901 Hampden Lane. Nor was he aware that the Council refused to approve 4901 Hampden Lane at 100 feet high. He agreed that the Council did not intend the MPDU bonus to override the requirement that development be compatible. T. 213.

4. Charles A. Irish, Jr.:

Mr. Irish qualified as an expert in civil engineering. T. 218. He testified that public facilities are adequate to serve the project. Gas, electric, water, sewer, and storm drains are adjacent to the site. The property is within the W-1/S-1 water and sewer category. There is an 8-inch sewer line in Montgomery Lane that the Applicant will extend to West Lane. Gas mains and power lines are located both in Montgomery and West Lane. T. 221.

Mr. Irish stated that a stormwater management concept plan has been prepared for the proposed development and reviewed and approved by the Montgomery County Department of Permitting Services. T. 221. During site plan review, the Applicant must update its conceptual stormwater management plan and prepare conceptual sediment and erosion control plan. T. 222.

Mr. Irish described the sediment and erosion control concept for the property. Due to the underground parking, most of the run-off will go into the hole dug for garage rather than adjacent properties. In any location where the run-off could impact adjacent properties, the Applicant will install a silt fence to hold sediment on-site. T. 223. The bottom of the pit will be graded so that sediment will flow to a corner of the pit and then pumped into a sediment tank. Once it settles, it will be pumped out into the stormdrain system. T. 223.

He also described the stormwater management concept for the property. Stormwater management must conform to the State's environmental site design (ESD) standards to the maximum extent practicable. State and Montgomery County regulations require the owner to manage stormwater to a level equal to the difference between 100% of the site's impervious area and forest. In a new project, the first inch of run-off has to be treated that way. T. 224.

ESD measures consist of managing stormwater in the same manner as would occur in a forested area. This poses some problems in an urban area because there is little soil or large, open spaces. Typically, stormwater is treated by filtration through soil and plants rather than mechanical devices. T. 224.

Stormwater for the proposed development will be managed primarily by three different measures. A portion of the roof will be a green roof. The roof will have micro bio-filtration planters around part of the site which will drain to "silva cells" located under the sidewalk along West Lane. T. 224. He testified that there are several ways to design a green roof. An "intensive" roof uses deeper soil and more intense planting. An "extensive" roof has a lighter weight soil, less soil volume and more basic planting. An extensive green roof has been approved conceptually for this development. The concept devotes about 6,000 square feet of the rooftop to the green roof. The preferred planting method is to have plants delivered to the site on trays that may be removed if certain plants are not thriving. The roof is protected with a waterproof membrane.

The roof design is similar to that of a normal roof: it contains drains that collect water that is not absorbed by the plants. The water is then piped directly into the storm drain system because it has already been treated for quality. T. 225-226.

For impervious portions of the roof, runoff goes through the building system (in a separate pipe from the treated stormwater) and flows to bio-planters along West Lane or within the northern edge of the building. This will be drained into an underground vault that will treat the stormwater using more conventional methods, such as a storm drain filter. The filter cleans the water, so it may be piped into the storm drain system. T. 227.

Mr. Irish did not know whether residents using the roof for recreation could utilize a portion of the green roof because it depends on its final design. In his opinion, there were a "lot of options." T. 229.

According to Mr. Irish, the site is exempt from the forest conservation law because of its size. The Applicant has confirmation of the exemption from the Maryland-National Capital Park and Planning Commission. T. 229. There are two significant trees on the site (i.e., with diameters of 24 inches or more) and both will be removed during construction. One is not in good condition and both are on the property line with Edgemoor at Arlington North. T. 230. There may be a specimen tree on the 4825 Montgomery Lane property whose Critical Root Zone may be impacted, but if both projects are under construction at the same time, the tree will have to be removed. In the event the subject property proceeds first, he opined that they could obtain

a variance from the requirements of the Forest Conservation Law because the level of CRZ impact from this development will not harm the tree. T. 230.

Mr. Irish opined that there are not other significant natural features on the property, such as flood plains, protected soil or rock, or forested areas that need to be preserved and protected. T. 231.

According to Mr. Irish, right-of-way dedications for both Montgomery and West Lanes will be provided if the project is approved. The Sector Plan recommends a 52-foot right of way for Montgomery Lane. There are only 25-feet of right-of-way dedicated from the center of the site, so the Applicant will dedicate the additional 12 feet. The Sector Plan does not specify a right-of-way width for West Lane, but Technical Staff recommended a 50-foot width for the Holladay Project. Given that the right of way is currently 45 feet, the Applicant proposed to dedicate 2.5 feet on their side of the street so there will be 25 feet from the center line of the existing right of way to the new right-of-way line. T. 232.

Mr. Irish described the lay-by proposed along West Lane. West Lane is currently 18-feet wide from curb to curb in the hammerhead turnaround area. As part of the Holladay Project, Technical Staff requested the Applicant to widen the pavement to 22 feet. The prior applicant also received approval to construct a lay-by approximately 6-feet wide and 40 feet long. This Applicant has agreed to install that also. As a result, there will be 28 feet of paving from the lay-by curb to the other side of the road (i.e., 22 feet of roadway paving plus the additional 6 feet for the lay-by. T. 232-233. The vehicles that use the lay-by will be less than eight feet wide, so there will still be 20 feet of paving available when a truck is parked in the lay-by. The location of the lay-by is similar to the one proposed for the Holladay Project. T. 233. The Applicant discussed the lay-by with representatives of the Montgomery County Department of Transportation, who felt that the lay-by alone would satisfy the loading requirements for the project. T. 233. The exact design of the lay-by will be determined at preliminary site planning. T. 234.

Mr. Irish also testified regarding the turning radius available to various loading vehicles. He opined that the vehicles using the garage will be limited to a height of eight feet and seven or eight inches. The height necessary to accommodate a handicapped van is 8'6", so handicapped individuals may use the garage or the lay-by to access the building.

According to Mr. Irish, moving vehicles have three loading options. U-Haul has trucks that are 8'7" in height that may accommodate move-ins for the anticipated size of these units. These vehicles could use either the lay-by on West Lane and (if they add another inch of height to the garage entrance) may use the garage to unload as well. They would also be able to use the loading bay along West Lane. Mr. Irish presented sweeps of the anticipated turning movements (Exhibit 88). An SU-30 box truck is a standard AASHTO vehicle typically used for larger deliveries, which is typically 30 feet long. The SU-30 is much larger than any of the units will need, but the sweeps demonstrate that it could be accommodated on the site. It would be able to pull-up into the hammerhead driveway and back into the loading bay on West Lane or back into the garage entrance and turn to go into the lay-by. That truck would not be able to use the loading space within the garage because of its height. T. 237.

Mr. Irish also presented sweeps for a WB-40 truck, which is a tractor trailer. He does not anticipate that this will be used for moves to and from this project, but showed how one could turn around if pulling into West Lane. Like the SU-30 truck, the tractor trailer could pull into the

hammerhead, back slightly into the garage entrance, and then pull out and go into the driveway. T. 238.

Mr. Irish testified that typical Fedex and UPS trucks are smaller than a SU-30 truck. His firm measured a Fedex truck and UPS truck delivering to their office. The Fedex truck was eight feet wide, 23 feet long and nine inches long, and 8 inches high. The UPS truck was seven feet, nine inches wide, 25 feet long and 10 feet, 1 inch high. T. 239-240.

Mr. Irish explained that both these trucks could load at the building because each has less sweep than the SU-30 and the height of the loading bay along West Lane is 10 feet. They are considering adding an inch to the height there to accommodate the UPS truck. He was not sure whether a UPS or Fed-Ex-sized truck would have to make the double movement to come out, but it can certainly make the three point turn to pull out and stop at the lay-by. T. 241.

### **April 17, 2013, Public Hearing**

#### **1. Charles A. Irish, Jr.:**

Continuing his testimony from the previous day, Mr. Irish opined that the loading and turning movements that will be used by trucks delivering to this site are typical with other similarly situated projects through the Bethesda CBD and TS-R District. T. 5. Loading for the Edgemoor highrise is located on its eastern end. Montgomery Lane at that location is 20 feet in width and they are proposing a 22-foot width on West Lane. Thus, trucks unloading at the proposed development will have an additional 2 feet to work with. He is not aware of any loading available in City Homes, unless the alleys are designated for loading or drivers park illegally on the street. T. 7. In his opinion, the hammerhead turn-around on West Lane is better than many situations because it will not block traffic on the Montgomery Lane, although it may briefly hold-up cars exiting the garages of the subject property and 4825 Montgomery Lane. T. 7.

The brick sidewalk on the north side of Montgomery Lane is six feet wide at the Edgemoor High-Rise. At some points, there is a ½ foot concrete band on the outside. The six-foot width is very consistent through the entire street on both sides. The primary difference between the north and south sides is the amount of planting space. The planting space on the north side is approximately 7 feet wide and it is approximately 9 feet on the south side. Therefore, the sidewalk on the south side is approximately 2 feet further from the curb. T. 13. If one measures from the face of the curb northward in front of the High-Rise, there is either a seven foot lay-by or a 7-foot planting area and then the 6-foot brick sidewalk. He uses the brick sidewalk as the fulcrum of many relationships because that is where pedestrians will experience those relationships. T. 14.

Mr. Irish explained that the side walk is not measured from the curb when there is a planting area. It is measured from the edge of the planting area, which is between the curb and the sidewalk. T. 14. There is no plant area where the lay-bys are located and the lay-by is 7-feet wide; thus, the width of the sidewalk is a constant 6 feet. The building itself is setback 10-12 feet from the northern edge of the sidewalk. T. 15. The steps leading from the Edgemoor highrise's entrance extend into this setback between one and two feet. If someone exits from these steps, they barely have time to step off before they are within the sidewalk. In his opinion, this is why the walkway felt tight during the site visit. T. 18. Further west of the steps is an accessible ramp which extends approximately 4-5 feet into the setback. A four- to five-foot planter takes up the remaining setback area at that location. He opined that the streetscape there may also feel tight to a pedestrian because the Montgomery Lane frontage of the highrise is 172

feet long. The height is measured to the middle of the mansard, or from a height of 20 feet on the building, which visually adds an additional 10 feet to its height. T. 16. The western edge of the Edgemoor High-Rise is approximately 23 feet from the eastern face of 4825 Montgomery Lane. T. 28. Thus, individuals with views from the western face of the Edgemoor highrise will see the eastern edge of 4825 Montgomery Lane.

The Montgomery Lane frontage for 4901 Hampden Lane will be approximately 76 feet. The sidewalk remains at 6 feet with an additional 9-foot planter between the sidewalk and the curb. T. 18. The building itself is setback only 3 feet from the sidewalk. The top of the building steps back slightly to open up a view towards Woodmont Avenue, but the foundation is only three feet from the sidewalk. T. 18-19.

According to Mr. Irish, the City Homes townhouses are setback between 10 and 12 feet from the closest edge of the sidewalk. Steps approximately one-story in height are located on the end units, which in his opinion are a “major structure.” T. 26. The steps extend to within approximately 1 foot of the sidewalk on the easternmost unit, which then adjoins the 9-foot plant area. T. 22. The western three townhouse sticks have the same 10 to 12-foot setback from the sidewalk. The stairways on these end units are approximately 5 feet wide, which leaves about 5 feet for plant area.

The six-foot sidewalk continues on the north side of Montgomery Lane in front of 4825 Montgomery Lane. From Montgomery Lane facing the building, the frontage extends approximately 46 feet. There is a 7-foot plant area between the sidewalk and the curb. The building face has some undulations; measured from points closest to the sidewalk, the building is setback 6 feet from the sidewalk. T. 25. The streetscape in front of the subject property will most likely continue the 6-foot sidewalk, in his opinion. There will be a 7-foot planting area between the curb and the sidewalk where three street trees will be located. He opined that the critical dimension is from the building face to the closest edge of the sidewalk. The subject property will have slightly more than a 12-foot setback. Because of its width, they have shown some benches adjacent to the sidewalk and a “great deal” of planting behind that. T. 32-34. This is much more than provided by the High-Rise with the accessible ramp extending almost all of the way to the sidewalk. The ramp is approximately 5 feet wide and 45 feet long, almost the length of the Montgomery Lane frontage for 4825 Montgomery Lane. T. 35.

Unlike the one-story steps along the City Home frontage, the steps in front of the proposed development will be relative gradual and double the normal height so that they may be used for seating. As a result, the entrance steps actually form an element of the public park area, although the design is not final. T. 37.

Compared with other projects along Montgomery Lane, the proposed development provides greater setbacks—there is a 12-foot setback along the entire Montgomery Lane frontage. The setback for the pocket park is 28 feet. Thus, the building face of City Homes is 101 feet from the northernmost face of the scalloped edge of the subject building. T. 73.

The proposed development’s 12-foot setback from the sidewalk is the largest setback area on the street, except for portions of the Edgemoor High-Rise. City Homes would approach it, but uses a lot of the setback area for the stairways and planters which, in his opinion, read more as private space. The building steps back along the Montgomery Lane frontage at 50 feet, and 4825 has no step back and was approved for 65 feet. 4825 Montgomery Lane will actually be higher than the fifth floor of the proposed building, although visually it is only five stories. T. 39.

Mr. Irish dimensioned the pocket park on Exhibit 112. According to him, the sidewalk will appear larger in front of the pocket park. The area of the scallop that came out of the original building footprint is approximately 615 square feet. The area extending from the original footprint to the right-of-way line (after dedication) is 393 square feet. If you extend the area further to the curb line, an additional 1,171 square feet will be included within that corner area. The seating area located west of the pocket park is an additional 398 square feet of space. The total amount of space (exclusive of the benches located west of the pocket park) is 2,179 square feet. T. 45-53.

He then proceeded to continue these comparisons for the two westernmost buildings on Montgomery Lane, the Edgemoor at Arlington and the Edgemoor at Arlington North. The Edgemoor at Arlington (on the south side of Montgomery Lane) is a three-stories fronting on both Montgomery Lane and Arlington Road. It steps from 33 feet along Arlington Lane to a 46-foot height further from the roadway. T. 56. About 10 feet from the curb, the building has a trellis or pergola that steps up four feet. The sidewalk is difficult to measure here, in his opinion, because it is all hardscape. T. 53. The building is setback approximately 11 feet from the sidewalk along Montgomery Lane, although there is an underground electric transformer that sticks up more than a foot on the eastern corner of the building. The planter area is approximately 7 feet wide. The Montgomery Lane building frontage 46 feet. T. 54. The Edgemoor at Arlington North has a 7-foot planting area along the Montgomery Lane frontage, continues the six-foot sidewalk, and has an 11-foot setback between the sidewalk and the building face. The Montgomery Lane frontage extends approximately 65 feet. The building is 35 feet fronting on Arlington Road which steps up to 48 feet. T. 56. Thus, setbacks on the north side of the street (from west to east) are 11, 12, 6, 12, 10 and almost a foot. Setbacks on the south side are 11, 10-12 and 3 feet. T. 56.

Mr. Irish also compared the distances between the building faces of the City Homes and development on the northern side of Montgomery Lane. The distance between the face of the proposed development and the City Homes steps is 73 feet. The distance between the City Homes and the step back on the subject property is 85 feet. The difference between the Montgomery Lane building faces of City Homes and 4825 Montgomery Lane is 67 feet. The same measurement between City Homes and the Edgemoor High-Rise is approximately 66 feet. T. 58-59. Based on these measurements, the subject building is located furthest from City Homes. T. 59.

According to Mr. Irish, the County does not take into account the ground elevation when calculating the height of buildings. Nor is he aware of any Sector Plan that requires one to vary from this approach. T. 61. In his opinion, elevation would not go to compatibility because, if the Council felt that elevation was important, they would have accounted for it in structuring how height is measured. As one walks down the street, eye level changes as the ground elevation does; here, the changes are not dramatic enough in the sense that there is not a cliff. T. 62.

Mr. Irish described the sight lines from City Homes to the subject property. Most of the units in the two easternmost townhouse sticks of City Homes will not see the subject property because their view will be blocked by 4825 Montgomery Lane. The rear decks will have a view of the pocket park. T. 62.

The two sticks directly across from the subject property are connected by an alleyway that has six garage entrances on either side. The units closest to Montgomery Lane have bay windows in the front that could provide a very limited view looking to the north. Even if there is

a northern view, it would be of the eastern half of the building, including the scallop and the park. The end units have direct view to the north, but the building will be located 73 feet away, which is similar to the relationship of City Homes and the Edgemoor High-Rise. T. 66.

The western edge of the western most townhouse stick will not have a view of the proposed development because it points toward the setback area between the subject property and the Edgemoor at Arlington North. T. 66. The Council must have considered this view when it approved the Edgemoor North building. T. 66-67.

The end unit on the second townhouse stick from the west looks directly on the pocket park. This unit will have an angled view of the building looking to the left. T. 67.

The front of the units in the third stick from the west (facing the mews) have windows that look straight at each other. These units will have a view that aligns with the curb of West Lane, but may have a view of the pocket park as well. These views are impacted more by 4825 Montgomery Lane. T. 67-68.

The easternmost stick of City Homes will look directly out at 4901 Hampden Lane. The easternmost townhouse stick is 48 feet from the 4901 Hampden building, which is 71 feet high. In his opinion, the visual relationship between City Homes and the subject property is larger than any other on the street, and is consistent with the street edge. T. 68.

Mr. Irish explained why the original development plan listed more public use space than the amended development plan. Originally, the development plan contained 4,092 square feet of public use space. Of that amount, 1,731 square feet was located along the northern property line, leaving a balance of 2,311 square feet located along West and Montgomery Lanes. A total of 2,841 square feet is needed to meet the minimum 10% public use space requirement in the TS-R Zone. The Applicant added the 615 square foot pocket park. They also had to shorten the West Lane frontage slightly to accommodate the additional loading dock next to the garage entrance. Thus, the space along the northern edge didn't go away; the number got smaller because they decided not to designate the northern edge as public use space due to previously expressed concerns over whether the space was functional. While the footprint shrank by 87 feet, other adjustments were made to the building that left the overall gross floor area the same. T. 74-78.

According to Mr. Irish, many projects in the TS-R District struggled to get the minimum amount of green space. He questioned the viability of the small islands between the driveways for 4825 Montgomery Lane as public use space. In addition, he testified that the ADA accessible ramp in front of the Edgemoor High-Rise is designated public use space, although in his opinion it reads as public, not private, space. T. 79.

Mr. Irish opined that the proposed development plan did not conflict with the county Capital Improvement Program (CIP) and does not rely on any CIP projects. T. 82. He stated that the application meets all development standards contained in §59-C-8.4 of the TS-R Zone. T. 82-86.

On cross-examination, Mr. Irish testified that, after zoning, the height of 4825 Montgomery Lane was reduced to 60 feet to the roof and 64 feet to the top of the parapet wall. T. 93. He wasn't sure why the building gross floor area remained the same even though the amended plan set it back only 12 feet from the western property line rather than the 15-foot setback in the original plan. He agreed that it may have been moved to increase the public use space along West Lane. T. 94-97.



He testified that the alleys between two westernmost City Homes townhouse sticks were 39 feet wide and the mews were approximately 30 feet. He acknowledged that the Montgomery Lane frontage of the proposed development is twice the size of the City Homes townhouse sticks. He conceded that the massing of City Homes is considerably less than that of the subject property. T. 99.

He acknowledged that he had not been inside any of the City Homes' units to test the sight lines. T. 100. He testified that the distance between 4901 Hampden Lane and City Homes is approximately 48 feet, but the City Homes "basically abut" the Hampden Lane project. According to him, City Homes were built to the property line without windows, which permits the adjacent building to abut. T. 102. He also acknowledged that the renderings did not show a handicapped ramp to the building entrance. T. 105. In his opinion, the steps in the pocket park will not have the same non-public feel of the City Homes because they will be part of the pocket park and are not as high. In his opinion, the entire area in front of the lobby will read as public space. T. 107.

Mr. Irish did not know how much of the roof area would be passive activity space and how much would be green roof because it hadn't been designed. T. 108. There will be approximately 6,000 square feet of green roof. He doesn't believe it is important to know how much recreational space will be there because they have met the minimum requirements. T. 108-109. He did not know for certain whether any of the rooftop area had been counted toward the minimum private amenity area, but opined that there is more than enough at grade to meet the minimum requirements. In addition, there will be a fitness center within the building, but he did not know its size. T. 110.

According to Mr. Irish, he measured the height of City Homes to the peak of the roof, which he admitted is different than the height used for zoning purposes. Under the Zoning Ordinance, height would be measured to the eave, which is approximately 47 feet. He conceded that the height comparisons for other buildings went to the top of the flat roof and not to the penthouse or any other mechanical structures. He also conceded that he based his comparisons of 4825 Montgomery Lane based on the 65-height approved at the zoning stage even though it will only be 60 feet high. T. 110-113. He testified that his calculation of the 35-foot height for Edgemoor at Arlington North did not include a pergola or terrace that projects out making it appear as if the four-story portion extends into the Arlington Road frontage. T. 115. He did not include penthouses or mechanical structures in that height measurement either. T. 115.

He further testified that a semi-trailer could back into a portion of the garage entrance, but could not go all the way down because it is 13 feet high. It could not fit in the at-grade loading space either. He did not know how far back the truck could go before having to negotiate the turn in the garage drive aisle. T. 115-127.

He acknowledged that the binding element relating to the pocket park did not mandate that it consist of 615 square feet; rather, the binding element requires the park to "substantially conform" to the development plan. In his opinion, a 25% reduction in the size would not substantially conform to the development plan. He admitted that he could not identify now exactly the size and design of the park. T. 132. He did not think that people walking along the street would notice minor deviations from the park shown on the development plan. T. 132.

Mr. Irish conceded that part of the park area includes areas where pedestrians must walk to enter or exit the building. Part will include steps will also be used to access the building. T.

132-138. The top of the stormwater vault on the northern portion of the building cannot support trees, although it may support shrubs or ornamental grasses. T. 150-151.

He testified that the elevation of the Villages of Bethesda is approximately five feet higher than the elevation of the subject property and is walled at the property line. T. 153-154. The side of the townhouse units extends another 35-40 feet. The northern setback area will be defined by the closed face of the proposed development's northern wall, which is 70 feet high, and a wall of 35-40 feet on the other side. T. 154-155.

Mr. Irish stated that he believes the 6-foot wide lay-by on West Lane is adequate even though the lay-by for the Edgemoor is 7 feet wide. Even if a truck extends 2 feet into the travel lane, there is still 28 feet of paving for passing vehicles to maneuver. The Edgemoor lay-by has only 20 feet of paving left. He does not think it's necessary to have a wider lay-by on West Lane. T. 158-160. In his opinion, there will be sufficient room for the type of truck using the garage loading area to maneuver because this will be limited to large vans or pick-ups. T. 166. He believes the loading at the subject site is superior to other buildings in the area because of the limited traffic along West Lane. T. 169. If space on the green roof is counted toward active and passive recreational space, the Applicant will not reduce the amount of exterior space devoted for this purpose. T. 175.

He testified that the dimensions of the pocket park must stay approximately the same because the project must meet the minimum use space requirements. T. 175. He testified that the at-grade loading bay may accommodate a 10-foot U-Haul box truck that, according to U-Haul's website, can move a small studio apartment. Their website states that a 14-foot box truck may accommodate a two bedroom apartment, which is the largest unit in the building. U-Haul's website states that a 17-foot box truck will move a two-bedroom home. Both vehicles could be accommodated in the at-grade loading space. The 20-foot box truck, which will accommodate a three bedroom home, would have to park in the lay-by. T. 176-177. Private moving companies also use these size trucks. T. 178.

On re-cross, Mr. Irish testified that the amount of public use space lost from the original development plan could be included along the Montgomery Lane frontage if the setback were increased to 28 feet rather than 12 feet. T. 161.

2. Ms. Susan Turnbull;

Ms. Turnbull opposes this application. She resides in City Homes and is an interior designer specializing in commercial design. Her unit is located in the third townhouse row from the westernmost edge of City Homes. T. 197. She has a Bachelor's and Master's degree in urban planning and urban studies. She served on the Board of Appeals for four years and served as Chair for three of those years. T. 194. As part of her work on the Board, she regularly assessed both compatibility and Sector Plan conformance of proposed special exceptions. T. 194.

She did the same for the subject development plan. She believes it fails to conform to the Sector Plan and is incompatible with the surrounding community. She feels that as-built conditions in the area should be considered in determining the compatibility of the project, which she thinks is detrimental to the neighborhood. T. 196.

The most important area for determining the compatibility of the project is the development's immediate vicinity, which she thinks are the residents and pedestrians using Montgomery Lane. The rears of the City Homes units have relatively few windows. There is a garage, kitchen, and bathroom on the first floor. There are two windows in the rear of the second floor, one of which has an HVAC unit which prevents individuals from seeing outside. The fronts of the units have a first floor window, a second floor bay window, which is usually the living room, a third floor bay window, which is the master bedroom, and a fourth floor family room that currently has views to the park to the north on Arlington Boulevard. Once this property is developments, the latter view will no longer exist. T. 197-198.

Ms. Turnbull expressed concern that she will feel surrounded. She did not object to the HOC building because she cannot see that building from her windows. It is lit at night and ends up providing light in the back. According to her, the Hampden Lane building is inaccurately shown on the Applicant's exhibit because it will have cut-outs along the mews. Failure to show these cut-outs in the exhibits is an example of her frustration with the application. The exhibit does not show the vantage point of the surrounding area from the City Homes. T. 199.

She believes that her light and vantage point will change dramatically if the application is approved. T. 199. After Hampden Lane is built, there will be no views of the sky from any of the front rooms in her home because of the proposed building's height. Her home is four-story townhouses with a rear garage, not a three-story townhouse as described by the Applicant. Her living room and her master bedroom have bay windows facing the mews. Currently, she is able to view the existing single-family homes where the Hampden Lane project will be because they are at lower elevations. T. 203. She does not typically look straight out because of how one must arrange the furniture. If she does, she sees a townhouse that mirrors hers across the mews with trees, benches and greenspace. When she looks toward the subject property, she sees the existing driveway, about half of Lot 26, and the sky above. She can see north to the Villages of Bethesda and beyond. There is nothing beyond the subject property that is equal in height to the proposed development. The units further north on the townhouse row have even greater views because of the angle. T. 206-207. According to her, one may view the southwestern edge of the property from the alleys as well.

Ms. Turnbull testified that 18 out of the 29 townhouse units in City Homes would have views obstructed by the proposed development. T. 209. According to her, obstruction of these views is critical because of the Hampden Lane building's impact on her property. The Hampden Lane building abuts the property line of the City Homes project with cut outs at the mews. At the cut-out, the building will step back at the second floor. Thus, the windows of her townhouse will look directly into the windows of the units in Hampden Lane surrounding the mews. T. 210.

She disagreed with the Applicant's assertion that the City Homes townhouses were 53 feet high. According to her, all of the approvals for the HOC building state that it is 48 feet high. There is a difference in elevation of 5 feet. When she views the HOC building from her townhouse, they are level. Thus, subtracting the difference in elevation, the City Homes units are approximately 43 feet. T. 211.

She does not find that the Applicant's height comparisons have been comparing apples to apples. In order to validly compare the relative heights, one should count the mechanical equipment in all of the projects. T. 212.

If the proposed development is approved, Ms. Turnbull believes that residents of City Homes will feel “surrounded” by larger projects on all sides. T. 213. She testified that the unique character of Montgomery Lane demonstrates the “tightness” of the immediate vicinity. T. 215. It is the only two-way road between Woodmont Avenue and Arlington Road and the traffic restrictions are complicated. *Id.* Unlike Hampden Lane, which faces commercial uses across the street, Montgomery Lane will be exclusively residential when developed. *Id.*

She testified that the Holladay Project remains relevant because the compatibility of other projects on the street were measured by comparison with that building. T. 217. The Holladay Project stepped back from 48 feet high to 65 feet high; this was a basis for approving the site plan for 4825 Montgomery Lane, the Edgemoor at Arlington North, and 4901 Hampden Lane. T. 217-218.

She stated that the density proposed will cause operational problems within the area. Contrary to the Applicant’s testimony, she needed two trucks to move into her four-story unit. In addition, when she had furniture delivered after moving in, it came in trucks much larger than U-Haul or FedEx trucks. She is concerned that people will often be moving in and out if the units are rentals, adding to the existing congestion along Montgomery Lane. T. 218.

In her opinion, there are three elements to compatibility—height, mass and density. T. 218. The Holladay Project did a better job of addressing these issues than the proposed development plan. That project had a 48-foot setback on three sides of the building and was four and six stories high, consistent with the Sector Plan’s recommended building heights. The project also had a step down to five stories along its northern and western edges facing the Villages of Bethesda and the Edgemoor at Arlington North. T. 224. Neither of the two lots facing Montgomery Lane were 65 feet. In addition, the building was setback from Montgomery Lane by an additional five feet. She stated that the Holliday project was compatible with the surrounding area.

The differences between the Holladay Project and the proposed development illustrate the reasons why the latter is incompatible. She laid a massing diagram of the proposed development over the Holliday project. She was surprised to find that the proposed development filled all of step backs provided by the former approval, except for one small corner along West Lane. T. 225. The massing diagram also illustrates that the additional density has been accomplished by “shifting” the mass of the structure to the most congested corner of the property, i.e., the southeast corner at the intersection of Montgomery and West Lanes. T. 225.

The height of the proposed development is not compatible with the surrounding area because it does not take into account the effect of ground elevations, according to Ms. Turnbull. The measuring point for the Holladay Project was at 335.2 feet above sea level while the measuring point for the proposed development is 335.8 feet above sea level, which is 8 inches higher. Because the proposed development is located at the highest point along Montgomery Lane, she believes its impact is far greater than other 70-foot projects in the surrounding area, some of which are at significantly lower elevations. T. 226-229.

She submitted a chart of projects within the surrounding area that lists each project’s combined elevation and height (from the measuring point for zoning purposes). For instance, the proposed development has a combined height of 405.8 feet, representing the 335.8 elevation plus the 70 height from the zoning ordinance measuring point. T. 230. In comparison, the Holladay Project was approved at a combined elevation of 376.2 feet. *Id.*

According to Ms. Turnbull, there is a 20-foot difference in grade level between Arlington Road and the highest point along Montgomery Lane. And the north side of Montgomery Lane is higher than the south side. In her opinion, this works against the Applicant because the elevation of Montgomery Lane in front of the subject property is 328 feet. Thus, from the perspective of a pedestrian walking directly in front of the building along Montgomery Lane, the building will be 77.8 feet high, rather than 70 feet high. T. 233. This is well above other existing structures because the Applicant chose to develop the project at the highest elevation on the street. *Id.*

In comparison, she stated, the combined elevation and height of 4901 Hampden Lane is 9.8 feet lower than that of the proposed development. The 4901 Hampden project, however, has a 10-foot step down along Montgomery Lane, so in actuality, it is 19 feet lower than the proposed development. T. 234. This is inconsistent with the recommendations of the Sector Plan because Woodmont Avenue is supposed to be the “top of the tent.” *Id.*

The proposed project will also be 12-feet higher than the Hampden Lane building because there is a 12-foot difference in elevation between the two projects,.. Thus, even though both projects are seven stories, the Hampden Lane building will be a full story lower than the proposed development without counting the step backs on that building. T. 235.

Because the Edgemoor highrise was approved with the understanding that it was not to set a precedent, the bookend for the tenting concept adopted by the Sector Plan should be 65 feet. T. 236.

In addition, Ms. Turnbull believes that the Applicant has incorrectly asserted that the height of the City Homes is 53 feet. She has reviewed the approved plans for City Homes, which lists the height as 48 feet. This is consistent with her physical observations of the HOC building, which appears level with the upper floor of her unit and is 5 feet lower in elevation.

Ms. Turnbull compared the combined height/elevation of the various buildings in the surrounding area with that of the proposed development. With the exception of the Edgemoor highrise, the remaining buildings are all lower than the proposed development. The elevation of City Homes to the roof line is 380 feet compared with the 405.8 feet of the subject development. T. 236. The Edgemoor at Arlington has a combined elevation/height of 371.5 feet. T. 237.

In addition, according to Ms. Turnbull, all of these buildings have step backs in height to create compatibility with the surrounding uses, with the exception of 4825 Montgomery Lane. The latter, however, recently received site plan approval limiting the height to 60 feet to the roofline with a 4-foot parapet. T. 238. If the subject building is approved, the tent will begin at 100 feet, go down to 60 feet, and then back up to 70 feet for this development. If the Holladay design was deemed to be consistent with the Sector Plan, it is difficult to see how this building is consistent with it. T. 238-239.

Another important factor about the Hampden Lane building is that the measuring point for height was at the center of the building. Testimony during the project’s approval indicated that the building was no higher than 68 feet (even though approved at a maximum of 71 feet) at any given point, due to multiple stepback. Therefore, that project will actually be 15 feet shorter than listed by the Applicant after accounting for the grade change. T. 240-241.

Unlike the proposed development, the Hampden Lane project responded to City Homes by creating the cut-outs. These cut-outs could not have been larger because of the narrow width of that property. In comparison, the Applicant here has not made a similar response to the concerns of City Homes, who have requested that the setback from Montgomery Lane be

increased. T. 242. Ms. Turnbull testified that the proposed development has been described as a “water balloon,” with density pushed various ways. She questions why the density cannot be moved closer to the Villages of Bethesda or the Edgemoor at Arlington North. *Id.* The setbacks on the northern and western sides of the property are private amenity space. Decreasing these and increasing the public use space and increasing the setback would be more beneficial both for the public and for City Homes. T. 242-243.

Ms. Turnbull also feels that the parking ratio of 1 space for each unit is too low. She recognizes that people use the library parking for guest parking even though this is not technically permitted. She believes that the lack of parking in the proposed building will exacerbate this practice and result in congestion on Montgomery Lane. T. 244.

She believes that the Holladay Project represents compatibility in terms of massing and density. That project had a density of 73 dwelling units per acre and this development is 135 dwelling units per acre. According to her, the residents of City Homes have not heard any justification for this amount of density other than its permissible under the Zoning Ordinance. In her opinion, it is not permissible if it is not compatible. T. 245. None of the adjacent properties have exceeded the 2.5 FAR and greater weight should be given to those properties. T. 245.

Ms. Turnbull testified that the project’s design is incompatible with the area for several reasons. The location of the entrance will exacerbate existing operational issues because it will be a magnet for illegal parking. It takes only one illegally parked truck to impede traffic on Montgomery Lane. T. 247. In addition, there are few design details that replicate existing structures on the street. There are bay windows and insets on the Edgemoor High-Rise. The masonry of 4825 Montgomery Lane mimics that of the Edgemoor High-Rise and captures the Federal style of City Homes. In contrast, the proposed development has modern architecture and does it contain the fenestration of the other two projects that creates their residential character. T. 248. The mechanical rooftop structures on the other buildings are also hidden, unlike the proposed development plan. T. 249.

She felt that the Applicant’s position that the steps to City Homes and the accessible ramp along the Edgemoor High-Rise is not public space is a “silly notion.” T. 249. The proposed development does not show where the handicapped ramp will be, although it must come to the entrance. There are steps in the pocket park area. To think that one will not read as public use space but the other one will is an “unfathomable comparison.” T. 251.

Ms. Turnbull testified that the Sector Plan should be considered when determining whether the project will be compatible with the surrounding area. The Sector Plan calls for an urban village with mixed heights and varied sizes of buildings. She does not feel the project meets this vision. T. 252.

If the project is approved, according to Ms. Turnbull, it will adversely affect the surrounding area. The height will block many vantage points. Unlike the south side of Montgomery Lane, which is broken up and has a definite rhythm, the north side is going to have a 78-foot long mass and mirror the problem that exists with the Edgemoor High-Rise. T. 253. This 78-foot mass across from the pedestrian-friendly City Homes is wrong because it won’t be pedestrian friendly. This is exacerbated by the elevation of the proposed development. T. 254. The density and massing will adversely affect the traffic situation along Montgomery Lane. She stated that trucks park illegally every day. She does not believe that adding 120 units to the area will not have an adverse traffic impact. T. 254. In her opinion, the commitment to having 15% of the units designated as MPDUs is compatible.

Nor does Ms. Turnbull believe that the binding elements are sufficient to ensure compatibility. T. 255. She believes the binding element relating to deliveries is unenforceable. Neither the setbacks nor the height are compatible, in her opinion. She believes the public use space violates the Sector Plan because the Plan requires the public use space to be in usable locations. There should also be a binding element requiring a construction agreement with City Homes. Provision of amenity space is more than adequate. She does not think the amount, which exceeds the minimum required, is necessary because of all the activities in the area. T. 257. In her opinion, the binding element requiring service deliveries be made to the West Lane entrance is unenforceable. T. 256. The step back should be more than 12 feet. The requirement to keep landscape lighting in the amenity area to a maximum of 24 inches is compatible. T. 259.

In her opinion, the developers of the Holladay Project reached out to the community to solicit comments and respond to their concerns. Many of the development standards for that project reflected these concerns. According to Ms. Turnbull, the Applicant here has failed to do this. Their big concern is density because of the traffic congestion stemming from the design of Montgomery Lane. They have requested a greater setback, a greater step back along Montgomery Lane, and the addition of a step back along West Lane. They have raised the issue of the building's height many times and have made it clear that the northern setback area could have been transferred to the Montgomery Lane side of the building. Finally, they requested multiple times that the lobby be placed on West Lane and that the building have more articulation. T. 259-264.

None of these concerns were addressed. They were surprised when the developer added the pocket park, although this did not occur until the Planning Board expressed concerns over the public use space. T. 262.

3. Brent Polks:

Mr. Polks testified that he lives in the westernmost row of City Homes in the second unit from Montgomery Lane. T. 271. He feels that, while the Applicant's experts are well-intentioned, no one who doesn't live on the street can know what it's like. T. 272. The lay-by on West Lane will attract illegal parkers just as those in front of the Edgemoor High-Rise. T. 272. While he believes that the Applicant intends to preserve the lay-by for deliveries, he can guarantee that it will soon be filled with people who park there illegally and will not function in this manner. T. 272. He testified that the illegal parking on Montgomery Lane is "pervasive." T. 273. There are approximately three to four legal spaces across the street from the Edgemoor High-Rise lay-bys, and there is room behind those spaces for an additional three to four cars to park. These spaces are routinely filled. When the lay-bys are filled, delivery trucks park wherever is convenient. The design of the street, according to him, creates an "obstacle course" that is challenging to maneuver. T. 273. When trucks park illegally, it becomes hazardous because they obscure the views of people entering and exiting the driveways. T. 273. Because the portion of Montgomery Lane is one-way at the location, he believes the issue there is manageable. T. 273. If delivery trucks park in the two-way portion of Montgomery Lane, as he thinks they undoubtedly will, drivers must move into the lane for oncoming traffic to continue around them. He believes that this type of situation will increase the probability of accidents. Adding more vehicles to the street does not comply with the Sector Plan because that intended the street to be pedestrian and biker friendly. T. 274.

In his opinion, the traffic studies do not accurately depict the traffic congestion on the street because congestion due to illegal parking does not occur during peak hours. T. 274. The congestion occurs often during the middle of the day. According to him, it is unrealistic to think

that people will not have cars because it's an urban area. People simply don't give up their cars because driving is a part of human nature. T. 274.

He and his wife moved to City Homes from Bradley Boulevard because they wanted to live in an urban area. Both of them grew up in urban areas, he in New York and she in Pittsburgh. They did have a copy of the Sector Plan when they moved in and they assumed they could reasonably and realistically count on what it said to a large degree. He and his wife supported the Holladay Project as well as other projects in the area. According to him, they felt less disappointed in the developments than in process, which they felt could be manipulated. T. 276.

He testified that the project does not comply with the Sector Plan. When the Sector Plan was written, it must have been contemplated that MPDU bonus density was included in the maximum 2.5 FAR and 100 dwelling units per acre. They assumed that this was the "cornerstone" of the maximum density permissible in the neighborhood. The amendment increases the tract area by 25%, yet increases the density by more than two and one-half times. This density is far different than the "well spread out" density of the Holladay plan that proposed the four-story step back and moved that density up to the front of Montgomery Lane; they have actually moved 60% of the density toward Montgomery Lane. In his opinion, that "in and of itself totally destroys" the integrity of what is compatible and consistent with the quality of life they bought into. T. 277. Nor does the architecture bear any resemblance to what exists along Montgomery Lane. T. 278.

On cross-examination, Mr. Polks acknowledged that he had participated in appeals of the 4901 Hampden Lane project and the Hampden Lane approvals. T. 278-279.

#### **April 19, 2013, Public Hearing**

1. **Ms. Linda Skalet:**

Ms. Skalet testified that she lives in the Edgemoor condominiums on Montgomery Lane and has lived there for 10 years. She also testified she has professional expertise on the subject of urban design and city planning, having obtained a Ph.D. in art history from Johns Hopkins University and having taught numerous courses on architectural history. T. 13. Ms. Skalet stated that Montgomery Lane was envisioned as a pedestrian route from Metro to the library and other facilities, businesses and neighborhoods along Arlington Road. Ms. Skalet believes the building proposed in G-954 in no way conforms with the Sector Plan or with the character of the street as it was first set by the traditional brick and masonry architectural style of the City Homes and continued in the design of the Edgemoor and the Edgemoor at Arlington. That traditional style is evident in the structures at 4825 Montgomery Lane, the Sandy Spring project, and 4901 Hampden, whose north facade is on Montgomery Lane. T. 14.

Ms. Skalet testified about the history of the current design of 4901 Hampden Lane. It was originally proposed in 2004 as a 100-foot high, minimalist glass tower. Ms. Skalet was one of a group of homeowners in the CBD who opposed this design because it was inconsistent with the character of the street as described in the Sector Plan; the group believed, in short, the building was too tall and it looked like an office building. The County Council agreed and rejected the design for its lack of residential character and its excessive height, thus, reversing the Planning Board's decision. Triumph Corporation, the developer, redesigned the building. Exhibits 102(a) – 102(c). T. 14-16. Ms. Skalet described the re-designed facade as it faces



Montgomery Lane as including very little glass, with projecting bays, setbacks and balconies that created a varied residential appearance. Exhibit 120(b). T. 17. The revised design approved by the County Council in 2006 varies in height from 70 feet along Woodmont Avenue to 60 feet on Montgomery Lane, although the developer initially proposed a height of 100 feet. T. 18. Ms. Skalet feels this project resembles a residential building with balconies and projecting and receding bays enlivening its brick and masonry facade. Triumph ultimately did not go forward with development, but a new developer got the Council's approval in December of 2012 to go forward with the design. Ms. Skalet testified that this scenario proves the Sector Plan is still being upheld by the Council. The 9-0 Council ruling in 2004 still stands and the building will be built in accordance the Sector Plan. Exhibit 120 (b). T. 18-19. Ms. Skalet described the 2012 building as similar to what was proposed in 2006 in terms of its massing. She stated the façade includes projections, bays and balconies on that portion to the west facing the Edgemoor, which Ms. Skalet finds to be very respectful of the residential neighbors across the street. Exhibit 120 (e). T. 20. The Sector Plan describes Montgomery Lane as starting at six stories and declining to three; according to the tenting, each building going from east to west should decline in height relative to the one beside it. T. 31.

Ms. Skalet testified that, in addition to re-confirming the building height and mass of the 2006 approval for 4901 Hampden Lane, the Council approved a reduction in the number of units. Originally, that building proposed a range of 50 to 70 units in 2006, in 2012 the Council reduced this to 40-50 units. The change in the total number of units resulted in a reduction in the number of MPDUs as well. This reduction was found to be in compliance with the Sector Plan. Ms. Skalet testified that the current applicant says they must maximize the number of dwelling units so as to be able to maximize the number of MPDUs. She believes this was not the Council's interpretation of the Sector Plan as it pertains to Montgomery Lane just four months ago. T. 20. Ms. Skalet stated the community is now confronted with an even more dramatically inappropriate building, a massive, commercial-looking structure on the west end of Montgomery Lane where, according to the tenting set forth in the Sector Plan, buildings should not be as tall on the west end as they are on the east end. The Sector Plan specifies that buildings on Montgomery Lane should decrease in height from Woodmont Avenue moving westward to Arlington Road starting at six stories and going down to three stories on Arlington Road. T. 21. Ms. Skalet testified that on the south side of Montgomery Lane, the buildings comply with these specifications. The currently approved design for 4901 begins on Woodmont at 70 feet in height and declines to 60 as it goes down Montgomery Lane. The City Homes Condominiums vary in height from 48 feet to 52 feet at the peak of their roofs. The Edgemoor at Arlington is 48 feet high on its eastern end on Montgomery Lane and declines to 35 feet on Arlington Road. On the north side of the street, buildings begin at a height of 100 feet with the Edgemoor condominium. Ms. Skalet stated that it is important to note that the Edgemoor's height of 100 feet was approved with the proviso that it not be precedential for future development on the street. T. 22. The building at 4825 Montgomery Lane was approved with a height of 60 feet, with a 4-foot parapet. At the end of the street, the approved design at the corner of Montgomery Lane and Arlington, which like the Edgemoor at Arlington across Montgomery Lane from it starts at 48 feet on Montgomery Lane and declines to 35 feet on Arlington Road. Ms. Skalet feels the applicant in this case wants to put a massive 70-foot building without residential detailing between these last two developments. She believes it is totally out of character with the rest of the street and will loom aggressively over the streetscape of Montgomery Lane and the properties adjacent to it on the east and west. Ms. Skalet testified that the building is reminiscent of the first design for 4901 that was rejected because it was too glassy. She feels that sort of glass wall does not provide

privacy, reflects light and heat and it simply does not belong on a street that was designed to be specifically residential and have this very special character. T. 22. Ms. Skalet said “vast expanses of glass belong on Woodmont Avenue, but not on Montgomery Lane.” T. 23.

Ms. Skalet also opined that Montgomery Lane is “unsuited” to lots of trucks and repair vehicles. She stated that her residence, the Edgemoor at 4821, was not designed with enough pull-in bays for service trucks, leading to occurrences of blocked entry and exit to the parking spaces. T. 26.

2. Susan Turnbull:

During her cross-examination, Ms. Turnbull testified that she was concerned about the top of the proposed building being square rather than varying heights; however she conceded that with a six foot setback, she would not be able to see the top of the building from her residence. T. 78. She agreed that residents of The Villages of Bethesda, who support the proposed development with a 15 foot setback as a binding element, will have a more direct view of the proposed development than City Homes residents. T. 78, 80. Ms. Turnbull believes the Edgemoor High-Rise was a mistake and that the continuation of the building line would be a mistake on the other side of West Lane. She stated she believes “it's a false argument to say that it is more important to hold the building line than it is to provide a greater setback because of what has occurred on that street and because of the added benefit to pedestrians and to City Homes.” T. 80.

Ms. Turnbull admitted on cross examination that the Planning Board determines setbacks at site plan, and has determined in this proposed development, as well as in the cases of 4825 and Edgemoor at Arlington North that a continuous building line is important. She also agreed on cross examination that Planning Board staff acknowledged that the public use space provided addressed the requirement for providing the public use space on the front at the same time respecting the Sector Plan recommendation approving the building line. She admitted as well that the Planning Board approved the project with the setback as is established. T. 84.

City Homes did not oppose 4825 Montgomery Lane, which was approved with the height of 65 feet at the street because it's across from a parking meter, there are two sticks of City Homes and then there's also a parking mews across from West Lane, the subject property. When asked if she agreed that tenting in the Sector Plan is intended to provide tenting from the urban Metro core to the edges of the Sector Plan area and if one were to construct a similarly a building with a similar height as 4825 Montgomery Lane and across to the west of West Lane, would it not fall within that tent line, Ms. Turnbull replied that she did not believe that line is starting at the proper place in the urban core because you can see a building in front of it which is really the building on Montgomery Lane. Ms. Turnbull stated that the Sector Plan recommends a building height maximum of 65 feet, a 3 to 6 story structure. T. 101.

On cross-examination, Ms. Turnbull admitted that 4901 Hampden Lane and the Edgemoor High-Rise have identical density (3.05) and MPDU numbers (15%) to the proposed development. T. 109-110. Ms. Turnbull testified that she believes the Council approval of the Edgemoor High-Rise was a mistake and that the size and setback of that building are incompatible with the neighborhood. T. 114. Ms. Turnbull was questioned as to whether she believed Lot 26 of the Holladay property could eventually be redeveloped similarly to the Sandy Spring Builders property, to which she responded no, because the Holladay property had been approved with a plan where the entrance to the building was farther back and so it would have been unlikely that a building the size of 4825 Montgomery Lane would be in front of it. T. 114.

Ms. Turnbull later read Section 59-H-2.24 of the County Zoning Ordinance which states, "[A]fter acceptance for filing, an application for a map amendment shall not be modified or amended so as to increase the area proposed to be reclassified as to the class of zone requested." As such, Ms. Turnbull relayed that Lot 26 could not be incorporated into the Holladay Project without increasing the area of the application in that case (G-843), which would not be permitted under the zoning ordinance. T. 138.

Ms. Turnbull testified that in her experience on the Board of Appeals, comparisons of height can be very different, particularly in cases where a building is on a parcel that is on an incline. T. 142. Ms. Turnbull opined that a building that is at a permissible height limit as measured by Montgomery County Zoning Ordinance standards may still be incompatible and detrimental to adjoining properties, hence the usage of the term "limit" rather than the term "right." T. 142. She stated that each project should be considered on a case-by-case basis to determine compatibility and that each project should be evaluated against surrounding communities and surrounding properties. In the subject case, there is a street where there is a significant amount of approved properties that are going to be as built. As such, the decision on compatibility is based on what is currently there and what is approved to be there. T. 142-143. Ms. Turnbull testified density and operational effects of the Hampden Lane building will not have as much impact on City Homes as this development because of its proximity. Additionally, she believes the proposed development will bring more traffic onto Montgomery Lane. T. 144. In terms of support for the project, Ms. Turnbull stated there are no residents in Edgemoor at Arlington North currently, so why Edgemoor at Arlington North does not oppose this application is a subjective question, and different from the concerns of real people who live in City Homes and Edgemoor, the real neighbors and people who will experience change. T. 144.

Ms. Turnbull stated that in her view, the biggest difference between the proposed development and the Hampden Lane development is that the entrance of the proposed building is on Montgomery Lane. Ms. Turnbull stated many pedestrians walk on Montgomery Lane and believes in making this an even more pedestrian-friendly area by adding more space in the front of the building. T. 144. On cross-examination, Ms. Turnbull admitted she was aware that one of the conditions of approval by the Planning Board for the subject property required the entrance of the building on Montgomery Lane. T. 158. On cross examination, Ms. Turnbull further admitted that the proposed development appears to have 10% public space (in the form of steps seating), consistent with the other developments in the neighborhood. T. 61.

3. Daniel Joseph:

Daniel Joseph testified that he is a resident of City Homes, where he has lived for 12 ½ years. T. 169. His home is an end unit on Montgomery Lane. T. 170.

Mr. Joseph testified that he did not find anything objectionable with respect to the Holladay design and thought it was a good attempt to meet the requirements of the Sector Plan. T. 171. However, he believes the SJG project represents a departure from the provisions of the Sector Plan. He stated the development would "produce a massive building that I think is inconsistent with the plan and inconsistent with the neighborhood." Mr. Joseph finds the Holladay and the SJG projects to be quite different. The SJG design is seven stories on Montgomery Lane whereas the Holladay design had a 4-story section that fronted on Montgomery Lane with individual. The SJG design has doubled the number of dwelling units with a 50% increase in off-street parking. T. 172. Ms. Joseph stated that the current Sector Plan reduced the open space requirement that the 1976 plan imposed, but this was done to allow lower rise buildings to be economical. He believes there was a deliberate trade-off in the plan between building height and

open space. For a reduction in the open space requirement, building developers would be expected to reduce the height of buildings to attain this urban village pattern. T. 173.

Mr. Joseph discussed the specific height requirements in the Sector Plan. He first discussed that building heights were to be from three to six floors. Second, buildings were to be stepped down from the greatest height, closest to Woodmont Avenue, to the lowest, along Arlington Road, where residential scale is to be maintained. He quoted page 85 of the Sector Plan, "Heights of up to six floors are preferred near Woodmont Avenue to achieve the desired urban form." T. 174. Mr. Joseph stated the Sector Plan described the step down that was to occur from those six floors near Woodmont was to be gradual and to avoid dispersed high buildings; the goal being to avoid situations where an individual building would step above its surroundings. Sector Plan, p. 42. T. 174. Mr. Joseph further quoted the Sector Plan, stating that rooftops are to be designed, "to achieve a residential image by using hip roofs, gables, turrets and other kinds, other types of pitched roof lines....to improve character and reduce the sense of bulk." Sector Plan p. 85. T. 174. He quoted the Sector Plan as also stating, "locate front unit entrances along the street when residences are provided on the first floor to encourage street life." Sector Plan p. 85. T. 174. Mr. Joseph stated he concludes by looking at the plan restrictions that the Sector Plan does not contemplate a large apartment building taller than its immediate neighbors on all sides on Montgomery Lane to the west of West Lane, which is more than half of the way to Arlington Road from Woodmont Avenue. He feels, "it doesn't belong there. I think that the, the SJG project would violate every one of the Sector Plan provisions that I've listed." T. 174-175. Mr. Joseph believes this is a plan by the developer that upsets the balance of the green space that used to be required is reduced in favor of lower buildings. He believes it is not in the public interest to allow buildings taller to be built again, but with the reduced green space requirement. T. 175. Mr. Joseph also testified that in connection with the height and the step down requirements he feels it is being argued by the developer that other buildings have violated these requirements and gotten away with it, therefore, this project should be able to violate the 6th floor limit and the and the step down limit. T. 176. Mr. Joseph believes the Sector Plan still says what it says and should be enforced. T. 176-177.

Mr. Joseph testified that the primary reason he found the Holladay proposal acceptable was that it had a 4-story townhouse-like section that fronted on Montgomery Lane and the taller part of the building was actually set back approximately 100 feet from the street. T. 177-178. Mr. Joseph believes the development proposed in G-954 violates the roof design requirement that is intended to reduce the building's bulk and the appearance of its bulk and that the developer has not attempted to comply with the Sector Plan requirement regarding the mass of this building, which he finds to be one of its most objectionable features. T. 178. In further violation of the Sector Plan, Mr. Joseph pointed out there are not any front entrances along Montgomery Lane in this proposal, which means the proposal doesn't meet the Sector Plan goal to improve the street life. T. 178.

Mr. Joseph testified that Montgomery Lane was given a special status under the Sector Plan and called a "mixed street." There are only three mixed streets in Bethesda. T. 179. The Sector Plan describes a mixed street as one, "that emphasizes pedestrian circulation while allowing limited, slow, vehicular traffic." T. 179. Mr. Joseph stated that Montgomery Lane was given this designation because it links the Metro core to the Montgomery County Library and surrounding neighborhoods and is used by employees and residents alike. Mr. Joseph calls this strategy successful, as he lives in a house on Montgomery Lane that fronts on the street and large

numbers of pedestrians use it. According to Mr. Joseph, when the City Homes residents first understood the dimensions of this proposed development, their immediate concerns included the impact on Montgomery Lane that seemed to be threatened. T. 180. In current traffic conditions on Montgomery Lane, Mr. Joseph testified, when a lane is blocked, it's not really a disaster because cars can only go one direction, so they can get around the parked vehicle. On the west side of West Lane, Montgomery Lane is two lanes, and if anybody parks on the street, the traffic in that direction has to cross the double line and face, and face opposing traffic. Exhibit 40. T. 181. The City Homes Association's concern is that the same types of traffic obstructions would occur, but that they would be much more dangerous where the street is two-way rather than one-way. T. 181-182. The Sector Plan says that instead of curves, there could be ballards because people are expected to walk across the street much more than an ordinary street. Pedestrians and cars are actually to have equal access, so any kind of significant increase in traffic is very troublesome. T. 182.

Mr. Joseph stated that on the side of Montgomery Lane he lives on, the houses are townhouses with street entrances and relatively low-rise. He stated the roofs were designed break the houses up and make them much more individualized. He believes the proposed project would be inconsistent with City Homes, architecturally. T. 185. Mr. Joseph feels strongly that a 12-foot setback, as proposed in this project, is almost invisible if you were walking on Montgomery Lane looking up. T. 186-188. He stated that he thinks you would see it and you wouldn't see a setback, you'd just see like a line and stuff of a different color and he doesn't believe the setback proposed will make much of a difference. T. 189. On cross-examination, Mr. Joseph was asked if he was aware that City Homes' counsel submitted in writing to the applicant that they wanted to see flat roofs on their property. Mr. Joseph replied that he was not aware of that "but it doesn't change my view." T. 197. Mr. Joseph stated that the Sector Plan provides a variety of possible roof details but doesn't say that developers need to have all of them; it says that builders have to work on the roofs to have turrets and things of that nature, which could include a flat roof. According to Mr. Joseph, "the point is to use architectural details to reduce the bulk of the building." T. 202. Mr. Joseph testified that his primary concern is for Montgomery Lane "because that's the street I live on and that's the one that has this mixed street designation and that's where the townhouse-like frontage is supposed to be." T. 207.

4. Richard Lawch:

Mr. Lawch testified that he has lived at 4810 Montgomery Lane since 2007. His unit is in the easternmost row of the City Homes townhouses, the third unit from Montgomery Lane. T. 210. He is the President of the City Homes Association. Mr. Lawch testified that the City Homes Association is currently working with 4901 Hampden Lane on a construction agreement, as well as a tieback and a crane agreement. Mr. Lawch explained that the tieback agreement would allow the 4901 developers to stick rods under the City Homes property in order to give their foundations more support. He stated that City Homes is cooperating with 4901 Hampden Lane and they believe this cooperation will help the construction end quicker, as well as make for a safer environment for everybody on the street. City Homes was not initially supportive of the development at 4901 Hampden Lane, but Mr. Lawch stated "but now that it is what it is, we're cooperating with them going forward." T. 217. 4825 Montgomery Lane is clear in the site plan is that the building itself is 60 feet. The parapet is 4 feet. He believes that confusion with regard to this building stems from the location of the building height measuring point, which is at 1.7 feet above what their maximum elevation. T. 215.

Mr. Lawch testified that in contrast to the cooperation with the 4901 Hampden Lane, the public hearings on West Lane had many participants in opposition and the hearings have been quite contentious, pointing out that in this case there are two association groups testifying in opposition, each with separate counsel. T. 217.

Mr. Lawch stated that 100 percent of the City Homes residents wrote letters to both the Hearing Examiner and the Planning Board. T. 217. He testified that the residents of City Homes were particularly disturbed by the fact that the Applicant calls this an "amended development plan" because he believes it is quite a different proposal than the Holladay plan. According to Mr. Lawch, the homeowners are frustrated that "a developer can buy a parcel and associated development rights and then completely ignore the previously approved development plan and the binding elements on those parcels... SJG then came along and completely changed what we think is the dynamics of Montgomery Lane." T. 219-220. Mr. Lawch testified that many residents purchased units at City Homes specifically relying not only on the Sector Plan's vision of Montgomery Lane, but also on implementation of the Sector Plan. T. 220. He stated that the Sector Plan is very straightforward in regards to how Montgomery Lane should be developed and that it's supposed to provide townhouse communities, three to six stories high. T. 220-221. Mr. Lawch stated that when each of the five projects was approved, they were all in compliance with the Sector Plan and compatible with each other. T. 221. Mr. Lawch said that the technical staff and Hearing Examiner reports and County Council resolutions on the previous projects, all referenced with compatibility to each other. T. 222.

Mr. Lawch testified the City Homes Association had several meetings with their counsel and with the applicant and its counsel, which he characterized as unproductive. He felt during those meetings that the Applicant had little, if any, interest in making any of the Association's suggested changes and seemed to have little concern for the neighborhood or its residents. T. 224. Mr. Lawch stated that to date the only concessions made by the Applicant have been reluctant responses to concerns expressed by the Planning Board and its staff and have been, in his opinion, "inadequate." T. 224. The applicant's original plans submitted had no step down at the top. Responding to Planning Board staff, the applicant first authored a 9-foot setback, then a 12-foot setback. Mr. Lawch considers this to be "not a very dramatic setback when you compare the bulk and height of that building." T. 225. Mr. Lawch stated that, at the request of the Planning Board, the applicant agreed to provide an internal bay for delivery trucks, which was one of the Association's recommendations, but the proposed bay is smaller than the Association requested and doesn't accommodate moving vans and other large trucks. Further, Mr. Lawch stated, the applicant cut out an approximate 600 square foot of semi-circular, of a semi-circular portion of the building on the corner of Montgomery Lane, but even that improvement, came at a price. T. 225-226. The Planning Board's original instruction to the applicant was to, quote, "Meet the public use space requirement for the project in the front of the building along Montgomery Lane and West Lane." Instead, Mr. Lawch testified, the applicant reduced the amount of public space and created the cut-out. T. 226. Mr. Lawch explained that the Association wanted some sort of setback in the back. Mr. Lawch stated, "We weren't demanding necessarily 15 feet, but we were suggesting that something be done up front and we also felt that there was no reason it had to be a win for us and a loss for the Villages of Bethesda. It could very well have come out of the mass of the building itself or the footprint of the building itself since we're arguing for a reduction in mass of the building, there's no reason why they can't have their 15 feet and we can have some manageable setback of the building on the south side or on Montgomery Lane." T. 227. However, the net of the public space after the semicircle actually went down from a total public space of 14 percent to 10 percent after the cut-out. T. 231.

According to Mr. Lawch, the Association was, “talking about the 15-foot public setback we were hoping to get some square footage, some setback of the building. Instead, we got a scallop.” T. 234. Mr. Lawch feels the public space proposed is inadequate, stating “if you look at this supposed park, look at the width of this seat which is not really a seat, it's a wall. If I want to sort of sit and read a book, I sure as heck don't want to sit on a hard, cold bench without any sort of back support. It's a very uninviting environment for anybody coming from the street. It's more ornamental and oriented towards the occupants than it would ever be for people walking the street.” T. 235. In regards to the binding element restricting deliveries to the service entrance for the rear of the building, Mr. Lawch believes this will help reduce the traffic issues at Montgomery and West Lane, but feels the binding element is poorly drafted and probably needs rewording to make it clear that it's the applicant's legal responsibility to enforce the regulations and not just post regulations. T. 235. Mr. Lawch testified that the City Homes residents feel at this point that every change is a battle with concessions given grudgingly and often in the way that minimizes their value. T. 236.

Mr. Lawch stated he finds it telling that the applicant compares the height of their project to the Edgemoor highrise, rather than some of the more comparative projects that exist on Montgomery Lane. Stated Mr. Lawch, “the Edgemoor is kind of a dinosaur and what we're trying to avoid is to repeat the mistakes of West Lane. Woodmont is an important border. It's the eastern boundary of the TS-R district or the point at which the tallest buildings and the most massive buildings in the TS-R zone should be located. So if the Edgemoor is not the benchmark, it shouldn't be, and it shouldn't be considered precedent. And what that leaves on Woodmont is 4901 Hampden Lane as an important benchmark for Montgomery Lane.” T. 241. Mr. Lawch believes since the West Lane project is located closer to Arlington Lane than it is to Woodmont, it is supposed to be part of the transition or reduction of mass and density as development moves from Montgomery to Arlington. T. 242. He stated that if 4901 and West Lane are built at the maximum height of 70 feet, the 4901 property, which should be the benchmark for height on the eastern portion of Montgomery Lane will be 9.5 feet, almost 10 feet smaller than the West Lane property, which will be the tallest property on Montgomery Lane absent the Edgemoor. T. 243 – 244. Mr. Lawch feels the applicant has made a lot of voluntary choices in this process: they've chosen a property that happens to sit on one of the highest elevations of Montgomery Lane, they chose to request approval of maximum building height that exceeds the Sector Plan recommendation and they're on a street where many of the properties are at lower and in some case considerably lower maximum elevations. Mr. Lawch believes the sum total of the applicant's choices result in a project that's clearly incompatible and that is it's a violation of the tenting rules. T. 244. Mr. Lawch testified that the actual elevation/measuring point for the building is 335.8 feet, which means when the applicant builds a 70 foot building on top of the 335.8 foot elevation, the altitude of the building is 405.8 feet. T. 246. Mr. Lawch stated that as the applicant has proposed the maximum height, they are also proposing the largest FAR and the largest number of units potentially allowable. He feels the project was built with one design notion in mind - to maximize every square foot of buildable space possible. T. 247. Mr. Lawch testifies that the height, the mass and the density are extremely important to City Homes residents, as they will be most affected given their proximity to the proposed development. T. 248. He feels the applicant has not made any concessions with regard to the FAR or the number of units. T. 249. The West Lane project, if approved in its current configuration, would also have the highest ratio of units per acre. Exhibit 53. T. 252. Mr. Lawch stated that the applicant “has chosen to be on Montgomery Lane and Montgomery Lane is simply not densely populated with units per acre and that is an existing condition that if the

applicant wants to conform to the neighborhood, be compatible with the neighborhood, its ratios have to be in line with the neighborhood. Reducing the number of units, regrettably reduces the number of MPDUs, but also reduces the traffic issues, helps preserve the pedestrian, bike-friendly nature of the Montgomery Lane and has other very significant reduction and impact that the project would have on the neighborhood.” T. 253. Mr. Lawch stated his concerns about traffic; due to the proposed parking on both sides of the street with the lay by and the parking on the south side, there's only room for one vehicle. If there's a problem with that vehicle or a car is coming down the wrong way on that portion of Montgomery Lane, the traffic pattern will be completely disrupted. T. 254.

Mr. Lawch stated that what the City Homes residents want to see is “a development that is in balance with the neighborhood.” T. 255. The Association is recommending as binding elements: 2.5 FAR, that the number of units be limited to no more than 100 units and that the building be pulled back from Montgomery Lane by an additional eight feet to restore most of the lost public space. Additionally, the Association is proposing a maximum height of 65 feet, since even 65 feet is a stretch in our judgment, we should still have a step down, but rather than 12 feet, we think 20 feet is more appropriate. The Association believes the penthouse should be moved away from the property further from the south side of the front of Montgomery Lane. The Association realizes that may require the elevators to be moved back, but they believe it is a reasonable request given the size of the building. The Association also thinks the building should have more of an architectural look in keeping with the neighborhood. T. 256. Further, the Association is requesting independent unit entrances and a public area along Montgomery Lane with seating and shade. The Association believes bay windows in the front would go a long way to breaking up the mass of the building; they believe it's important that height, mass and density all be dealt with together. T. 256-257. The City Homes Association would also like a construction agreement to make provisions for noise and traffic control, hours of operation for construction, and liability. The Association wishes to have an agreement that if during the cost of construction the applicant did something to their property, the Association would have a document to serve as a better basis to demand compensation. T. 263.

4. Louis Pohoryles:

Louis Pohoryles testified that he lives in the Edgemoor building located at 4821 Montgomery Lane in Bethesda, and has lived there for 10 years. Mr. Pohoryles testified at the hearing as a representative of the Edgemoor Condominium Association; he is the vice-president and a Board member of the Association. T. 264.

Mr. Pohoryles testified that the Edgemoor Condominium Association is concerned that the applicant is “trying to shoehorn a relatively large building onto the site.” The Association believes the proposed building is too tall, too deep and too wide for this relatively small site. Mr. Pohoryles testified that the Association objects to a step back of 12 feet above the 5th floor; as they believe it does little to diminish the bulk of the building. The Association's position is if the building is built to exceed four stories, it should step back immediately above the fourth story, not the fifth story, and for at least 30 feet. T. 269. On cross-examination, Mr. Pohoryles admitted while the Association wants a 30 foot step back to accommodate the height of the building, he has never actually seen a building with a 30 foot step back. T. 292.

Mr. Pohoryles testified regarding to the traffic situation near the proposed development. He stated the Edgemoor Condominium Association's issue with the development is related to an overtaxed street. T. 273. Mr. Pohoryles described Montgomery Lane as a narrow, walkable street. He stated there are only five legal parking spaces along Montgomery Lane today, and



each of those five spaces has 2-hour restrictions on it. T. 270. Mr. Pohoryles testified that there is a lot of illegal parking and stopping on Montgomery Lane. Exhibit 102 (a). T. 270. Part of the reason for the illegal parking, is that the Edgemoor's 54 units, City Homes' 25 units and Sandy Spring's four units all have or will have individual HVAC systems, and each unit owner will individual responsibility for interior, electrical and plumbing and light, in addition to the numerous common systems the buildings. The result is to have numerous different service providers visiting the street. T. 271. Additionally, Mr. Pohoryles stated that landscapers come frequently to all of the properties along the block, generally with trucks and trailers for equipment. Throughout the day, Mr. Pohoryles testified there are postal trucks, movers, delivery services for pizza and food, packages, flowers, upholsterers, drycleaners and installers of home improvements that are constantly parking on the street. He stated the only other parking reasonably available to service buildings on Montgomery Lane is the large garage adjacent to the Bethesda Metro, which is generally crowded during business hours, and it is difficult to find parking there. He testified that the only other public parking is at the library and that is by law restricted to library patrons. T. 271-272.

Mr. Pohoryles believes the applicant's building will suffer similar traffic and parking woes and hopes that not providing building entrance along Montgomery Lane will divert the illegal parking and deliveries to West Lane and not further clog the streets. T. 272. He testified that Montgomery Lane is the first street one encounters when one leaves the Metro parking lot (the garage on Edgemoor Lane) and wishes to go west and, in late afternoon, there is seemingly never-ending stream of cars going west on Montgomery from the Metro garages as well as other traffic coming off Woodmont. T. 273, 277.

Mr. Pohoryles addressed the studies that state that within this area only 62-68 percent of the people living in rental apartments in this area will have cars. He believes these studies are not applicable to this project, as it will be a more upscale building, and he believes most of the residents will have one or two cars. T. 274. Mr. Pohoryles states that the parking issues may be cleared up by strong traffic enforcement and tickets, but that will only alleviate a very small portion of the congestion and problems, as the real problem is there is no place for service vehicles to park. T. 283. Mr. Pohoryles finds the streets and sidewalks as they are now, even with the single-family homes where the proposed development will be, to be very crowded, often with bikes needing to use the sidewalks to avoid street traffic. T. 290.

### **April 29, 2013, Public Hearing**

#### **1. Ken Doggett:**

Mr. Doggett qualified as an expert in land planning and urban design. T. 28. He testified that he has a master's in urban planning and urban design, worked for several years as a registered architect. He later came to the U.S. and lectured in urban design at Virginia Tech. He currently designs buildings for the British Parliament. T. 29. He also served as an expert witness in the Edgemoor High-Rise case. T. 30.

Mr. Doggett testified that he believes the proposed project does not comply with the Sector Plan provisions applicable to Montgomery Lane regarding the urban village concept, the mixed street concept, building height, number of stories, number of dwelling units, density, the character of the buildings called for on the street, the design and design elements of the buildings on Montgomery Lane, the purposes of the TS-R zone, nor is it compatible with the adjacent development. T. 30-33.

Mr. Doggett opined that Montgomery Lane is a unique road; it's the only road in the Sector Plan that favors pedestrians. The road offers a "break" from the commercial development and provides a haven for pedestrians to travel from the Metro Core to the library and park on Arlington Road. T. 33. While the Sector Plan has been characterized as being out of date, in his opinion its recommendations remain valid and there have been no efforts to make changes to the recommendations for Montgomery Lane. Tr. 34. He opined that the architecture recommended by the Plan is contemporary traditional, reflecting an architectural movement in place just prior to its adoption. T. 34. According to him, Kentlands is an example of this movement as well. T. 35.

Mr. Doggett opined that, with the exception of the Edgemoor highrise (which was the first building constructed), most have the buildings have consistently been three to six stories. The idea of the setback is not to justify the height; the setback is one of many features. T. 36. Contrary to the recommendations of the Sector Plan, the proposed development plan calls for seven stories, five at the front end and two stepped back. In his opinion, the bulk of the building intrudes upon the street. He does not find that the 12-foot step back justifies the increased height. If the roof top mechanical structures are considered in addition, the bulk is "just too high." T. 37.

According to Mr. Doggett, page 82 of the Sector Plan envisions that buildings in the TS-R District should be low-rise, high-density, urban village housing. The Sector Plan also says the housing should appear to be townhouses, but actually three to six story buildings with apartments at each level. Mr. Doggett stated this would create a high-quality environment in the Bethesda housing market. T. 37.

While he believes that the scallop is a commendable beginning to reduce the building's mass, it is not sufficient due to the ramp approaching the entrance and the steps coming down. Normally, one would not go up a ramp and then steps. Despite this attempt to mitigate the bulk along the building's frontage, the use of glass emphasizes the mass and bulk. It is certainly not the type of program that should appear to be townhouses, which in his opinion, is the most important element of the recommendations of the Sector Plan. T. 39. The point of the Sector Plan is to provide a low-level entry scale to the Bethesda CBD, which is accomplished successfully by City Homes. T. 39. He submitted photographs of City Homes demonstrating this. The design of City Homes gives residents primary views of a landscaped courtyard from the main living areas of their home (i.e., the living room, master bedroom, and family room). T. 44. All units have balconies looking over the rear alleys that project about six feet from the rear. When you are on the balconies, people do not see what goes on in the alleyways below. T. 44. The design concept is that you drive into the garage, but when you look outside you see the garden of a big house. In his opinion, it is a very thoughtful design. T. 45.

Architecturally, City Homes has a very articulated structure. This includes stone at the bottom, brick, and a very strong cornice that comes out of the three stories, which means that one does not see much of the interior of the courtyards. This breaks down the mass of the buildings. He opined that the windows and entries are clearly residential and the peaked roofs are a residential feature used to terminate the height. T. 46. City Homes is a very residential human scale design. T. 45-46. Other developments along the street have used density, height and scale to reduce their bulk. T. 46.

Mr. Doggett testified that it is not necessary to keep the buildings along Montgomery Lane in a strict straight line when the buildings have varied architecture. Certain styles, such as the Federal or Regency style, call for straight edges to keep continuity along the street. He does

not consider the Edgemoor High-Rise classical; he considers it Edwardian. T. 48. In his opinion, the private space along the rear of the building could be put to better use through an additional setback along Montgomery Lane. T. 48. He does not consider City Homes as providing a straight edge; nevertheless, in his opinion, the breaks for the landscaped courtyards provide variety on the street. T. 49. He also believes that the step back that continues around three sides on the Edgemoor at Arlington is very compatible with the neighborhood. The materials and bricks are the same and the density is comparable to City Homes. T. 50.

Mr. Doggett opined that the Sector Plan tries to produce a “new urban” design on the street, which consists of intimate and open scaled buildings using the type of articulation used in City Homes. This articulation uses defined windows and doors rather than the large scale façade of the proposed building. T. 54-55. Other buildings in the area use gables, bay windows, high-pitched roofs, cornices, balconies and residential scale wall units to meet the guidance given by the Plan. T. 55-56.

He stated that one of the dominant themes in the Sector Plan is to build three to six stories and add landscaping details to break up the bulk of the buildings. T. 56. While affordable housing is important, it should not be a justification to “destroy” the Sector Plan. *Id.* The building at 4825 Montgomery Lane is not bulky; it’s only four stories, has residential scale and articulation, which include cornices, four types of residential window go the entire height of the building. The proposed development should not “shoot up” above this building because of its location mid-block. T. 57. Mr. Doggett stated that he believes a 12 foot set back is inadequate for the proposed height of this building. In his opinion, the step back should be a minimum of 30 feet, although this is not set in stone. T. 58. His main point is that, while elevators are a very important part of a plan, they should not dictate the design of the project and the step back needs to be greater to be meaningful. T. 58-59.

Mr. Doggett opined that his main objection to the proposal is the bulk; this bulk intrudes on the pedestrian foot path and “if you want human scale, you don't want that.” T. 59. The building at 4901 Montgomery Lane is 70 feet high along Woodmont, but stepped this height down along Montgomery Lane to 60 feet. T. 60. He believes that the need to build as many units as possible is inconsistent with recommendations of the Sector Plan. T. 63. Other buildings along Montgomery Lane are not as dense; he believes that the 100 dwelling units per acre is an average to be achieved within the entire District, and the specific recommendations regarding the District should control over the more general standards in the Zoning Ordinance. T. 64.

According to Mr. Doggett, given the amount of land area occupied by the City Homes townhouses, they play a role in setting the aesthetic character of the street. T. 66. With the exception of 4901 Hampden Lane, they occupy the entire south side Montgomery Lane. In his opinion, the tone of the street as developed sets its residential character. T. 67. The building at 4825 Montgomery Lane on the north side of the street is also residential. It is five stories and located between the Edgemoor High-Rise and serves as an appropriate transition to the four-story portion of the Holladay Project. T. 68. This building fit within both “tent concepts”: the first is to gradually decrease in height from the Metro Core to the edges of the CBD and the second is to decrease from 65 feet at the corner of Woodmont Avenue and Montgomery Lane to 35 feet at the intersection of Montgomery Lane and Arlington Road. Within the TS-R District, the primary concern is meeting the tenting concept from Woodmont Avenue and Montgomery Lane. T. 68. When asked whether City Homes was the “tail wagging the dog” because it

arguably should have been more dense to meet the minimum density of the TS-R District, he stated that other developments along the block have managed to be compatible with both. T. 71.

Mr. Doggett also expressed concern that the amount of light shining on the street would impact its residential character. T. 72. In his opinion, this would result in a building/streetscape that was more commercial in character. *Id.* Other streets in the CBD, and even in the TS-R District, are not valid comparisons because they are not subject to the Plan's recommendations that the street be primarily residential. T. 73. Other concerns about the proposed building include the glaze of the glass. T. 135.

To make the proposed building more in line with the Sector Plan, Mr. Doggett recommended 4-story building, set back at a reasonable distance so there would not be an intruding fifth and sixth floor. He recommends usable public space and landscaping to break up the mass of the building, such as planters coming over the edge, reducing the heavy relationship down below. T. 75. Mr. Doggett opined that balconies or bay windows would create a more residential appearance. T. 77. He also stated a setback would help minimize the impact of light lying into the other building. T. 78. Mr. Doggett said he would not recommend exceeding the density or the height limits which are recommended in a Sector Plan in order to achieve more moderate-priced dwelling units. T. 84.

On cross-examination, Mr. Doggett admitted that every building that's been approved since the Edgemoor High-Rise has a flat roof. T. 93. He conceded that there are inconsistencies in the neighborhood with regard to the Plan's recommendations. T. 114. He also testified that he doesn't think the building is a straight edge. T. 137. Mr. Doggett testified that Montgomery Lane is the only street with condominiums in the Sector Plan that calls for the urban village design. T. 138-139. Mr. Doggett testified that although the Planning Board twice recommended approval of the building with the current setback, he believes they could, at site plan review, call for a bigger setback. T. 151.

2. Richard Lawch (T. 154 – 220)

On cross-examination, Mr. Lawch agreed with the characterization that City Homes has had issue with the number of the projects surrounding them. T. 157. He stated that the issue with the subject property is mass; the square footage of the Hampden Lane property is 20% less than the subject project and the mass on 4901 is similarly 20 to 25% less than the subject property. T. 171.

Mr. Lawch, in describing the factors County Council might have considered in approving building height in the case of the Hampden Lane building, stated that Hampden Lane is a more commercially oriented street, not like the mixed street, 20 feet wide Montgomery Lane. He stated he believes Hampden Lane is 36 or 40 feet wide. T. 167-169.

On cross-examination, Mr. Lawch testified that it is his opinion that when the Planning Board indicated to the applicant to take the public space in the north of the building and move it up along Montgomery Lane, that that meant that the building should be pushed back. He also felt that the Planning Board determination that a scallop which sets back at its largest point 28 feet, was an acceptable solution, was contrary to the Planning Board's initial recommendation. T. 180.

On cross-examination, Mr. Lawch stated that the City Homes Association's position is that rentals are more transient than condos and because the entire neighborhood is made up of condos, it would certainly be their preference that the subject building be condos. T. 183. He

stated that because all the other projects along Montgomery Lane have similar densities, the developer should accept the fact that that's an appropriate density for that street. T. 190. Mr. Lawch stated that, as a resident of the neighborhood, he is more concerned about over doing density rather than under doing density. T. 206. Mr. Lawch stated that, including the penthouse and the fact that the proposed building's mass is 20% to 25% greater than anything else in the neighborhood, he feels pedestrians will get the impression the building is "looming on Montgomery Lane." T. 217.

He further characterized the height description of the building as misleading, as the building is at a higher elevation than others around it. Mr. Lawch stated, "I was also making another point that to a lay person or, for that matter, somebody who is looking at this building is not going to see 4901 as 70 feet and the subject as 70 feet. They will appear to be quite different in height and...quite different in elevation and they are. I think particularly if a building is bulkier and taller, it's more incumbent upon the architect and the designer to mitigate that height and mass." T. 211.

3. Mr. Jon Weintraub:

Mr. Weintraub testified that he lives in the Edgemoor condominiums at 4821 Montgomery Lane, where he's lived since 2003. T. 221. He testified that he serves on the board on a diverse group of Bethesda organizations and he is deeply committed to the success of downtown Bethesda. T. 222. Mr. Weintraub stated the Edgemoor residents supported the previous Holladay Project with 48 units as they felt it had a compatible design, but the residents do not support this subject development. He stated the subject project adds just a small parcel, Lot 26, to the building, yet more than doubles the number of units and parking places in the building when compared to the approved Holladay Project. This will more than double the number of units with cars on the only unique mixed street, the narrow Montgomery Lane in Bethesda. He believes lowering the building by a floor and creating a real step back of 30 feet would decrease its mass and make it much more compatible with its surrounding buildings. T. 223. Mr. Weintraub feels the proposed building makes no attempt to integrate itself with its surroundings and its glass facade and pocket park are not really compatible with the buildings on the block or within a block of Montgomery Lane. T. 223. He feels there should be more public amenity space in front of the building, which he believes can be achieved by moving the building north on the lot and using at least half of the 15-foot back alley behind the building. T. 223. Mr. Weintraub stated that the green space behind the building is a wasted resource to the walking and biking public using Montgomery Lane. He feels moving the building back seven or eight feet would also abandon the straight edge look, making it a more pleasant walk from the library to the Metro. T. 224. Mr. Weintraub stated the residents of Edgemoor reject the pocket park corner entrance as an improvement to the compatibility quotient for the project. They believe the only entrances to the building should be on West Lane with the elevator centered at the top of the building, to delivery trucks to turn onto West Lane and park in those lay-bys to make their deliveries and not block traffic by double-parking on Montgomery Lane. T. 224. Mr. Weintraub testified that previous Planning Board decisions, as well as the designers of Montgomery Lane, indicate Montgomery Lane was intended for walkers and bike riders heading to the library or commuting via Metro. He believes, therefore, it is a mistake to try and increase the density in the area. Mr. Weintraub feels density is already increasing in Bethesda; there are 3,000 plus units being added on Woodmont, between Woodmont and Wisconsin Avenue north and south of Old Georgetown Road in Bethesda and massive buildings more suitable to those locations. T. 225. Mr. Weintraub believes a very large majority of these units will be rental units, perhaps 2,800 of the

3,000. T. 234. He recognizes that subtracting 50 units from the proposed project is not going to make a difference in decreasing density in Bethesda overall, but feels it would make a difference to residents of the buildings immediately surrounding the proposed building, as the current proposal will more than double the existing number of units on the block or proposed for the block and more than double the number of cars exiting onto the block. T. 225, 229. Mr. Weintraub testified that if he were negotiating the proposal, he would ask to move the entrance to West Lane, put the elevator in the middle so that bulking and the massive look of the front of the building is pushed back and for a one-story lowering of the building. T. 227. On cross-examination, Mr. Weintraub read the support statement from the Villages of Bethesda and stated while he understood their position, it may not be in the interest of the greater population of the block or of the downtown. T. 238.

5. Andrew Niebler:

Mr. Niebler testified that he is resident of the Edgemoor condominiums at 4821 Montgomery Lane, where he has lived since 2004 and where he has served on the board. T. 247. Mr. Niebler also testified he helped to form a citizens group that is seeking to improve pedestrian safety in the Bethesda central business district. T. 248. He stated that living in a pedestrian-friendly community is very important to his family; his wife does not drive, he walks to work and one of his children will walk to school next year. T. 248. Mr. Niebler said when he and his wife started looking at housing options, they knew they wanted to live in a condominium located in a safe, residential and pedestrian-friendly neighborhood. They felt Montgomery Lane was a quiet, residential street in an urban environment that featured housing modeled on urban village concept. The narrow street and the quirky dead-end in the middle of the street prevented fast vehicular traffic. The low-rise townhouses and the open areas between the townhouses offered a sense of openness and spaciousness in downtown Bethesda. Further, the Metro, the public library and the elementary school were all within walking distance. T. 249. However, Mr. Niebler testified once they moved there, he realized the narrow street had a downside – service and delivery vehicles cause congestion on Montgomery Lane due to its narrowness and inadequate parking, and they add visual clutter to the street and undermine the pedestrian experience, especially when they are parked in such a way that the sidewalk is blocked or when traffic has to navigate around illegally and double parked cars and trucks or when frustrated drivers aggressively blow their horns. Mr. Niebler stated the traffic situation on this street can best be described as tense and that tension affects the pedestrians on the sidewalks as well. T. 250. Mr. Niebler testified that while the applicant has suggested that many of the 120 parking spaces will go unused, there is no way to guarantee that outcome and it does not resonate with his experience living in two different condominiums where there was not enough parking. He pointed out that residents without cars will schedule more deliveries to the street and “whether it's in the form of 120 more cars or a higher than average number of deliveries per resident, Montgomery Lane will pay the price in the form of increased congestion, a less walkable environment and diminishment of the mixed street concept.” T. 251. Mr. Niebler stated that “in approving the zoning change for the Holladay building, the County Council was not focused on maximizing density, dwelling units or MPDU's, but instead was very concerned with compatibility of a building with its surrounding area and the impact that the building and its residents would have on issues directly affecting the pedestrian-oriented quality of life on Montgomery Lane, as well as all users of the Bethesda Public Library.” T. 252. Mr. Niebler

feels the applicant's building looks like it will have a lot of glass that will give it a much more office-like appearance, altering the look and feel of the pedestrian environment on Montgomery Lane. T. 253. He stated the applicant has chosen to increase the number of units by about 135%, even though Lot 26 increased the gross tract area by only 36%, a decision he characterized as “the applicant seeking to maximize density and exceed allowable building heights instead of seeking a balanced approach.” T. 253. He characterized Montgomery Lane as a “deliberate and an intentional attempt by urban planners to create a little oasis in the middle of the TS-R zone to provide a pleasant pedestrian corridor connecting the Metro and the Bethesda Public Library.” He pointed out that Montgomery Lane was specifically created as a narrow street to discourage high density and auto traffic. T. 254.

Mr. Niebler testified that “4821 Montgomery Lane was built at a height of 100 feet to promote a linkage to the tall office buildings on Woodmont Avenue, to the low and mid-rise buildings along Montgomery Lane and based on the approvals for that building, it is specifically not to be used as precedent for other buildings on Montgomery Lane. 4901 Hampden Lane, at a building height of 70 feet and a penthouse height of 80 feet, fills a similar role with respect to linking the office buildings on Woodmont Avenue. That leaves only the applicant's building as being inconsistent with the concept drawing and not providing a linkage to adjacent, taller buildings.” T. 255-256. He stated that rather than attempting to produce a certain number of MPDUs and build to accommodate that number, the applicant should determine the appropriate size of the building first and then work backwards to see how many MPDU's that building can accommodate. T. 255. Mr. Niebler believes the mass of the building will not be meaningfully mitigated by the 15-foot step back of the 5th floor because at that height the step back is too removed from a human scale. He feels the building will be more oppressive than activating unless it is significantly set back from the sidewalk to provide more open space and significantly reduced in height. T. 255-256. Mr. Niebler stated, “in the final analysis, if the Sector Plan stands for anything, it must at the very least stand for the proposition that a building that might be perfectly appropriate elsewhere in the TS-R zone may not be appropriate on Montgomery Lane.” T. 258. Mr. Niebler showed a series of pictures depicting traffic issues on Montgomery Lane, including cars, public safety and service vehicles illegally parked. T. 257- 289.

### **May 13, 2013, Public Hearing**

#### **1. Chris Kabatt:**

Mr. Kabatt reconfirmed that, if 120 dwelling units are developed, the project will generate 20 A.M. and 25 P.M. net new peak hour trips. If 100 units are developed, this number drops to 14 A.M. and 19 P.M. net new peak hour trips. In his opinion, the number of cars generated by this project is insignificant because the maximum number results in a vehicle trips every 2 ½ minutes during the peak hour. This would be further reduced if the project is developed with 100 units. T. 11-13.

On cross-examination, Mr. Kabatt testified that he used the trip generation rates established by M-NCPPC to determine the number of new trips to be generated by this project. These rates do not differentiate between rental and condominium units. The rates also include deliveries made to the site. T. 12-15.

#### **2. Marius Radulescu:**

Mr. Radulescu was asked to explain the tenting concept set forth in the Sector Plan. He testified that “tenting” calls for concentration of density in the CBD Core, which gradually decreases toward Arlington Road; the “tent” doesn’t have to physically span certain points. He opined that the concept must be read in the context of the Sector Plan’s guidelines to create a varied skyline. It may vary up and down during the gradual decline. T. 17-18.

He testified that the building could not have small adjustments, such as moving it further back or forward. Residential buildings have a very precise program that must be followed. The program is driven by regulations (such as ADA requirements) and market demands. While there may be some flexibility, there are forces on the inside trying to push the building out. For instance, when they increased the building step back from 9 to 12 feet that caused the units to be “pinched.” Increasing the step back further could further constrain the units so that they do not meet current regulations or market demand. There also quite a few forces pushing the building in. This design is an optimal means of balancing these forces. T. 19-20.

According to Mr. Radulescu, the units have optimal dimension to accommodate these factors. The optimal length along the façade is 24 feet. The optimal unit depth is 65 feet. There is little flexibility in design of the bathroom and kitchen, so there is only so much you can do with the rest. T. 21.

He also explained the discrepancy of 87 square feet in the original and redesigned footprint of the building. He stated that 87 square feet is approximately the size of a walk-in closet and is very insignificant. There are minute design features that may affect the gross floor area of the building. The perimeter of the building is approximately between 450 and 470 feet. Just changing the façade from metal to brick will reduce the gross floor area by 40 feet by the time you change two floors. This may be why the gross floor area changed. They will not know the exact gross floor area until final design. That’s why they have committed to overall FAR limits and setbacks—the exact amount of gross floor area is unknown. T. 21-23.

He opined that the architectural details of the building will be finalized at site plan. The basic elements of compatibility with the surrounding area (i.e., height, setbacks, density) are the basic elements considered at the zoning stage. T. 23. They have addressed these elements in their design thus far—he looked at the neighborhood and saw a variety of styles, but there are unifying themes they have incorporated, such as a brick exterior. They have designed a contemporary interpretation of traditional composition, which includes a base, middle and top. They designed the top two floors to appear a little lighter; they have used metal rather than brick because it will change appearance by reflecting the different colors of the sky and does not have the weight or texture of brick. T. 22-25.

He explained this concept illustrated on several elevations of the proposed development. The West Lane elevation (shown on Exhibit 75) shows the base, which has vapor ejection, the middle and top of the building. T. 25.

Mr. Radulescu opined that the Montgomery Lane has sufficient architectural reading to be compatible with the surrounding buildings. It is similar to 4825 Montgomery Lane because that building also has a base, middle, and top, although its façade is flat. The proposed development has the carved portion of the façade and then a mid-level with three bay projections. As you proceed north along the building, there is a projection of four feet on the south side and then eight feet at the northeast corner. Because of these, in his opinion, there are sufficient indentations to give the building a scaled-down or residential façade. In his opinion, enlarging the setbacks will not achieve anything because the building already has a residential



feel. T. 26-27. When he refers to a “scaled-down façade” he means that there is no continuous wall. The façade along West Lane contains indentations that mirror the effect of townhouses as recommended in the Sector Plan. Each of the indentations is approximately 1-foot in depth, and the bay-like projections read like French balconies and break up the façade of the Montgomery Lane frontage. T. 27-28. There are also projections on the north end to break up the façade there. *Id.* He reiterated that the design does not attempt to reproduce the other building because their market does not want that; instead, the development plan includes the basic residential elements of those buildings. T. 32. According to Mr. Radulescu, compatibility doesn’t mean sameness; rather, it means that the buildings size, scale and function go well with the neighborhood. In his opinion, the proposed building does just that. T. 32.

3. Mr. Charles Irish, Jr.:

According to Mr. Irish, ground elevations are not considered when calculating building heights under the Zoning Ordinance. In his opinion, the Zoning Ordinance excludes ground elevation from the calculation of height because people view the building generally from a close distance. The street grade along Montgomery Lane is approximately 3%, which is relatively flat and will have little impact on perception of height. The difference in elevation between Montgomery Lane and Hampden Lane is at most 7 feet, not the 12 feet represented by residents of City Homes.

He clarified that 25-foot step back for penthouse is measured from the face of the building at grade. He also clarified that the setback from the right-of-way was to be 35 feet. T. 95-142.

4. Ms. Ashley Wiltshire:

On rebuttal, Ms. Wiltshire testified that that she has reviewed a traffic tape previously submitted, but excluded from the record. The video was taken from three cameras. Two of the cameras facing Montgomery Lane were posted on the corner of the existing structure on Lot 26, one of which could view Montgomery Lane west toward Arlington Road and the other was looking east toward Woodmont Avenue. An additional camera was posted on 4804 Montgomery Lane. The latter camera had a view of Montgomery Lane in front of the Edgemoor High-Rise. The cameras mounted on Lot 26 began taping on January 3, 2013, and the one on 4804 Montgomery Lane was posted on January 28, 2013. Each camera ran continuously for eight days from approximately 8:00 a.m. in the morning until 6:00 p.m. in the evening. 5/13/13 T. 156-159.

According to Ms. Wiltshire, the Applicant posted the cameras to determine whether Mr. Kabatt correctly assessed the low volume of traffic on Montgomery Lane. From the tapes, they extracted photographs of existing conditions at the same three times each day: 8:30 a.m., 12:30 p.m., and 4:30 p.m. They chose the mid-day time to reflect concerns about delivery vehicles. *Id.* at T. 160-161. She personally viewed the entire 120 hours of tape. *Id.* at 161. The photographs of the selected times (Exhibit 106(r)), generally reflect what she saw on the tape

She testified that she did not see any incident on the tape similar to the one described by Mr. Pohoryles. She produced a table of the delivery stops shown on the tape. The average delivery stop takes three minutes and there is an average of 4.67 deliveries per day. Rounding the latter up, delivery trucks are present on Montgomery Lane for an average of 15 minutes per day. The photographs submitted reflect that Mr. Kabatt’s analysis is correct; there is little

volume on Montgomery Lane. On the camera pointing to the west, she did observe one truck parking illegally, but it was not blocking the road or creating congestion. She also observed mail deliveries at 4:30 p.m., but this did not block traffic. *Id.* at 164-165. On the camera looking east toward the Edgemoor High-Rise, she testified that the lay-by there is almost always free and the loading bay is rarely used. She observed a UPS truck parked in the lay-by in front of the High-Rise at 12:30 p.m. on January 18<sup>th</sup>, 2013, and observed a 30-foot moving van and a car parked in the lay-by on other days. *Id.* at 165-168.

Ms. Wiltshire also described the Applicant's outreach to the community. Ms. Wiltshire testified that they had made a number of changes to the project to address the community's concerns. They included a binding element limiting the height of lighting in the private amenity area to address the concerns of the developer of the Edgemoor at Arlington North. T. 145. They also met with representatives of the Villages of Bethesda who had opposed the Holladay Project. They were initially concerned because the Holladay Project had a northern setback of 20 feet. The Villages of Bethesda requested that the fifteen-foot setback be made a binding element because some of their units have views of the property and the building will cast shadows on some area. They felt that the proposed development was an improvement over the Holladay Project because the setback area will be landscaped green area rather than loading and access. T. 146. The Villages of Bethesda also asked the Applicant to include a binding element not to have balconies on the northern façade and to have a construction agreement with the Villages of Bethesda. The Applicant agreed to this. T. 146-147.

The Applicant contacted Mr. Chipouras, who lives at 4828 West Lane. They addressed a number of concerns he had, including screening the transformers along the property line and providing a construction agreement. Mr. Chipouras also asked the Applicant to install two 20-foot wide driveway aprons, to which they have agreed. Finally, he has asked them to move the lay-by closer to Montgomery Lane. The Applicant has agreed to speak with DOT about the latter request. T. 147.

They have also had discussions with the owners of 4825 Montgomery Lane, Sandy Spring Builders. They had no issues with the project and agreed to support it. T. 147-148.

According to Ms. Wiltshire, the Applicant has met with representatives of City Homes on several occasions and has tried to address their concerns. As originally designed, the building did not have any step-backs on Montgomery Lane because none of the other buildings fronting that street have step backs. The step back on 4901 Montgomery Lane is very small and, in her opinion, does not significantly reduce the massing of the building. They added the 9-foot step back before going to the Planning Board, they increased it to 12 feet after the Planning Board hearing. This step back mirrors the approximate height of City Homes. They have also a binding element committing to a pocket park substantially the same as that shown on the development plan. They have also agreed to add plantings to the area to make it green. Finally, DOT approved the Holladay Project with only one lay-by. They now have three loading areas to address the concerns regarding congestion on Montgomery Lane. T. 151.

Ms. Wiltshire testified that a prohibition on deliveries to the main lobby is common in residential and office buildings. Enforcement of this is simple: all exterior doors are locked and monitored with cameras and intercoms. For this building, someone sitting at the front desk will be able to see an attempted deliver to the front door and may re-direct the delivery person through the intercom. T. 152.

Another major change to the building made in response to the community's concerns is the curvature in the façade. They were told that the box-like design of the initial building was ugly and had some concerns that the original location of the public use space was not functional. The Applicant's entire team went through these concerns and came up with the pocket park. They thought that the additional 28-foot setback would respond to some of the concerns expressed. It also narrows the Montgomery Lane frontage. They also added articulating elements, such as the indentations along West Lane, to give the building more interest. T. 153-154.